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REPORTS

OF

CRIMINAL TRIALS

IN THE

CIRCUIT, STATE AND UNITED STATES COURTS,

HELD IN RICHMOND, VIRGINIA.

BY ROBERT R. HOWISON,
COUNSELLOR AT LAW.

RICHMOND:
GEO. M. WEST & BROTHER.
1851.

REPORTS
CRIMINAL TRIALS

Entered according to the Act of Congress, in the year 1851,
BY GEORGE M. WEST & BROTHER,
in the Clerk's Office of the District Court in and for the Eastern
District of Virginia.

RICHMOND :
PRINTED BY MACFARLANE & FERGUSSON.
1851.

PREFACE.

Crime is, unhappily, always a subject interesting to man, and criminal trials often furnish the best illustrations of the sentiment that "truth is strange—stranger than fiction." Hence, reports of such trials have been generally read with interest.

The trials contained in this volume, have all occurred within comparatively a short time, and yet they present a remarkable variety both of *fact* and of *law*, and two of them reveal a wild and startling tragedy, seldom exceeded in real life. My object has been to give a full and accurate report of the evidence in each case, so as to furnish to the reader a reflected picture of what passed before the Court and Jury. It has been no part of my plan to give the argument of counsel; a *verbatim* report only would do full justice to the gentlemen whose names appear as advocates in these cases, and such report would have altered the character *designedly* given to this work. I wish readers to judge for themselves from the evidence. And therefore the names of the Jurors in each case have been given, that they may be held to a salutary responsibility for their verdicts. That they will be ready at all times to meet this responsibility, I think no one who reads these trials can doubt. Questions of law raised and authorities cited, have been noted with care that the volume may be of some service to professional readers.

No apology is offered for the insertion of any trial or any evidence herein found. We must look at things as *they are*, and not as we would wish them to be, if we desire to learn the *origin* and the *cure* of crime.

RICHMOND, VIRGINIA, *July 1st*, 1851.

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TRIAL OF JOHN FISHER.

HON. JOHN S. CASKIE, JUDGE.

*In the Circuit Court of Law for the County of Henrico, Va. Term
for the trial of Criminal Causes.*

Commonwealth }
vs. } Monday, October 28th, 1850.
John Fisher. }

John B. Young, Commonwealth's Attorney in this Court, appeared for the prosecution, and Thomas P. August and John Howard for the defence.

The prisoner was a young man, apparently not more than twenty-five years old, well made and stout, with dark hair and eyes. He was neatly dressed and was altogether rather prepossessing in appearance. He was brought into Court and on being arraigned pleaded "Not Guilty."

The Indictment charged, that on the 23rd of February, 1850, the prisoner feloniously uttered and attempted to employ as true a Counterfeit Bank Note of which the following is an alleged copy.

50.

No. 123.

The Bank of the State of North Carolina, promises to pay on demand to J. Wetmore or Bearer, Fifty Dollars at the Branch Bank at Fayetteville; Raleigh, 1 June, 1845.

C. DEWEY, Cash'r.

DUN. CAMERON, Prest. 50.

Made current in Virginia by usage, he, the prisoner, then well knowing said note to be counterfeit.

From a panel of twenty-four qualified veniremen, the following twelve were, according to Law, sworn as the Jury: Bariteer H. Cox, Richard Tinsley, Josiah D. Smith, Bernard O'Neil, Henry L. Reeve, Edward F. Blair, John Nettles, Thomas O. Burton, Jr.,

Charles Hagan, Robert McCandlish, Jr., James R. Fisher and R. H. Allen.

The prosecution was under the third section of Chapter Fifth, Criminal Code, 1847-48, page 104, which is as follows—

“Any free person who shall forge any coin current in this State, whether made current by Law or usage, or any note or bill of any banking company, or fraudulently make any base coin or note, or bill purporting to be the note or bill of a banking company, when no such banking company existed, or alter or attempt to employ as true any such false, forged or base coin, note or bill, knowing the same to be false, forged or base, shall be punished by confinement in the penitentiary for not less than two, nor more than ten years.”

The Jury having been charged by the Clerk, the prosecution opened.

Julia Dye, sworn—On the evening of Saturday, the 23rd of February last, after dark, the prisoner came to my house and after some conversation, asked me if I could change a fifty dollar North Carolina note, which he showed me. (Here the note from the papers was shewn to her.) I believe this is the same note, I have no doubt of it. I told the prisoner I had only thirty-five dollars in change: he said he would go out and try to get it changed: he did go out but after a while returned and said he had tried at several places but could not get the note changed. He then requested me to take the note, to give him the \$35, to pay \$5 for him to a person in my house, and said I might keep the remaining ten dollars,—that he would return on Wednesday evening, and would probably bring a lady to board with me, and that the ten dollars might go to account of her board. Accordingly I took the note, gave him \$35 and paid \$5 for him to the person he mentioned—this was Miss Mary Creekmore. I asked him his name—he said he had no kind of objection to giving his name—that it was Oliver.

He staid in the house that night, and left early in the morning, I did not see him again until he was arrested. He had been to my house once before this, and said something about bringing a lady to board with me.

The Monday after I received the note, feeling some doubt about the matter, I sent the note to Mr. Pairo, a broker, who pronoun-

ced it a counterfeit. I then gave information to the police and kept a look out myself : I was on the street frequently and went to the theatre, but saw nothing of the man until the Saturday following.

On the morning of that day, officer T. B. White saw me and told me he had heard something of the man—he advised me to put on male clothes that he might not suspect me as we came up to him. Accordingly I did so, and about dark walked down main street—officer White being near me. I saw the prisoner near a lamp in front of Saddler's Hotel—I stepped up to him and asked him if he knew me and recollected passing a \$50 note upon me—on my raising my cap, he immediately said yes, he had given me the note and he knew who gave it to him. He was then arrested by the officer. After he was examined by the Mayor, I got back \$21 of my money.

Cross-examined by T. P. August.—I handle a good deal of money of various kinds—a good deal of North Carolina money—consider myself a tolerably good judge of money—I did not hesitate to take this \$50 note as good, and saw nothing suspicious about it.

Mr. August.—Miss Dye, I do not wish to ask any unpleasant questions, but it is proper the Jury should know the facts of this case. What kind of a house do you keep?

Witness.—I do not feel bound to answer that question and will not answer it.

J. B. Young.—I do not see any necessity for such an inquiry. The Jury must see and know the character of the house.

The question was not pressed.

August.—Had the prisoner had any money dealings with Miss Creekmore? Why did he request you to pay her the \$5.

Young.—I think the question unnecessary.

The Court said the question was admissible and ought to be answered.

Witness.—He staid with Miss Creekmore that night.

Cross-examined further.—I do not know that it is usual for gentlemen coming to houses like mine, to give fictitious names. I always take the names given by gentlemen as true. I have never known any other case in which the name given turned out not to be the true one.

Emma Hall, sworn—I live at Miss Dye's—I know nothing of the money. I passed through the room on Saturday evening, the 23rd February, and saw Miss Dye and the prisoner in conversation. This is all I know about it.

Thomas B. White, sworn—Complaint was made by Miss Dye, that the prisoner had passed a counterfeit note upon her. From her description, I knew I had seen the man passing about town and at the theatre: I directed that a look-out should be kept for him. On Saturday, the 2nd March, I heard he was down in the neighbourhood of Saddler's. I advised Miss Dye to disguise herself in male attire and go with me; she saw the prisoner near a lamp, stepped up to him, and raising her cap, asked him if he knew her and recollected passing a \$50 note upon her; he said he remembered giving her the note, and that he had thought it was a good note and knew the man who gave it to him; he did not say who the man was. On being arrested and carried before the Mayor, he gave his name as John O. Fisher; I think he said it was John Oliver Fisher.

Cross-examined by August—The prisoner had appeared about town and at the theatre openly and freely; he did not seem to be concealing himself.

C. W. Purcell, sworn—I am an exchange broker; I think myself well acquainted with paper money in circulation—with North Carolina money. (Here the note was shewn to him.) I think this a counterfeit note; have no doubt of it.

Cross-examined by August—It is a very good counterfeit; nine persons out of ten would take it without suspicion; no one would be apt to detect it who had not skill in such matters—(Here the note was passed to the Jury, one of whom asked, how do you know it is a counterfeit?) The paper is somewhat rougher and coarser than the genuine; one of the signatures is different from the real; I tell also by the general appearance of the note.

John M. Clarke, sworn—I am an exchange broker; have had many years experience in the business; I think this note a counterfeit.

Cross-examined by August—It is an excellent counterfeit; would be apt to deceive 99 persons out of a hundred. Nothing but great familiarity with paper money can give the requisite skill to detect so good a counterfeit as this; a counterfeit is detected

by one skilled in such matters, by its general appearance and feeling, and by minute differences from genuine notes; it is very difficult to detect them when well executed; I have sometimes detected false notes which had deceived bank officers, yet in a course of years my clerks have taken many counterfeits which are now in my office.

Here the evidence for the prosecution closed.

For the defence :

O. H. Rand, sworn—I am the contractor for the masonry work on the Washington Monument, now going on in the Capitol Square; about the time when the work was to commence, the prisoner came to me, introduced by a gentleman who is now at work on the Monument; the prisoner asked if he could get work; I told him I thought it probable he could, that there was plenty of work about Richmond. I afterwards saw the prisoner aboard the Steam-Boat, going to Norfolk, I went down at the same time; I saw him several times during the week, from the 23rd February, to the 2nd March, he boarded at the Washington Hotel and came often to the square; I saw him the day he was arrested; the gentleman who introduced him to me, has been working on the Monument, and I consider him a very respectable man.

The evidence closed.

The case was earnestly argued, chiefly on the question whether at the time of passing the note the prisoner knew it was counterfeit.

The Jury retired at half past 8, P. M., were kept together during the night, and the next morning, at 11, returned into Court with a verdict of "Not Guilty."

The prisoner was discharged.

TRIAL OF JOHN CAMPFIELD.

HON. JOHN S CASKIE, JUDGE.

In the Circuit Court of Law for Henrico County—Criminal Term.

| | |
|-------------------------------|-------------------------------|
| Commonwealth | } Friday, November 1st, 1850. |
| <i>vs.</i> John Campfield. | |

For the Prosecution, J. B. Young, Commonwealth's Attorney.

For the defence, John H. Gilmer.

The Prosecution was founded on Sec. 11, Chapter 192, Code of Virginia. Page 828.

"Any free person who shall be guilty of burglary, shall be confined in the penitentiary not less than five, nor more than ten years. If a person break and enter the dwelling house of another in the night time with intent to commit larceny, he shall be deemed guilty of burglary, though the thing stolen, or intended to be stolen, be of less value than twenty dollars."

The Indictment charged that the accused, on the 13th of October, 1850, at about the hour of 9 o'clock at night, burglariously broke and entered the dwelling house of Jesse Barnes and Martin Sweeney, with intent to steal the goods of Jesse Barnes and Martin Sweeney.

The prisoner was a youth apparently not more than 16 or 18 years of age, with dark complexion, black hair and prominent eyes—Short, but very stoutly formed. He was arraigned and pleaded "Not Guilty" to the indictment.

The following composed the Jury :

George Lynch, Antoine Biné, Henry Shutty, James Kersey, Charles Ellis, George W. Carter, James M. Carter, Joseph C. Burton, Alfred Gwathmey, A. Hirsh, William P. Mayo, Charles D. Yale.

The examination of witnesses commenced at about 5 o'clock in the evening.

For the prosecution :

Jesse Barnes, sworn.—On the 13th of October last, at about 9 o'clock at night, I came home ; I found the young man, the prisoner, in my house ; I butted up against him when I came in. I asked him, who he was : he said, "hush ! don't make any racket, I am only after a darkie." I then seized him ; he struggled and tried to run ; I called to a colored boy of mine to come ; he came and we caught him and held him. Thinking my upper room not a safe place to keep the prisoner, we carried him to the cage ; there we searched him and found on him a chisel, a nipper and a skeleton key—(here *Mr. Gilmer* interposed and required the production of the alleged articles if they could be produced : *Mr. Young* directed them to be brought in) *examination in chief continued.* When I came to the door that night and put my key to it, it opened at once ; the prisoner said nothing at first ; the door had been forced open ; I could see the print of the chisel on the edge ; the bolt was somewhat bent ; I had locked the door on going out to church this night ; I went out about 7 o'clock. When we caught him and held him he cried "Murder !"—(at this point, a key, a chisel and a pair of nippers such as would be suited to grasp the end of a key in a lock were produced.) *Witness.* These are the articles found on him at the cage. The house is mine and Martin Sweeney's : the goods belong to both of us ; we sleep there ; the door I have spoken of opens into the private part of the house.

Cross examined by Gilmer.—Our store is under the same roof with the house ; the door I have spoken of is in the rear ; there is a brick wall on one side ; I did not lock the outer gate when I went out to church ; a passage from the rear door leads into the private part of the house ; there is a door from the passage opening into the store. When I came in, the prisoner was right behind the door ; he was in the passage and I consider that he was in my dwelling-house. There is a door at the top of the steps leading up from the passage, which might be locked when we chose to do so ; the prisoner was inside the entry or passage ; he would have been obliged to break open the rear door and then the inner door in the passage in order to get into the store. Martin Sweeney and I both keep house together. I came up against the prisoner. There was no black girl about the

premises; my boy was not on the lot when the struggle commenced; Campfield halloed and I called out and my boy came from the street. The door at the head of the steps was open, but after searching, we could not discover that any thing was missing.

Richard H. Barnes, sworn. I came from church that night; my brother went on a little before me; I heard a noise and on coming up found my brother and a black boy in charge of the prisoner. I helped to carry him to the cage. I asked him what he was after. He said "Nothing but a darkie." I asked him if he thought it was right to break open a house for such a purpose; he said nothing then, but asked to be permitted to go to the boarding house where the gentleman was with whom he said he was. I told him no, he must go to the watch-house; he then cried a good deal. At the watch-house we found these articles upon him and also a box of matches. On the door spoken of, there was a mark as if made by this chisel, and a piece of the hasp or bolt was burst off, by which means he got in.

Cross examined.—He did not say who was the gentleman with whom he was.

Archibald Wilkinson (Lieutenant of the night-watch,) sworn.—On the Sunday night spoken of, a little after 9, the prisoner was brought to the watch-house by the Messrs Barnes; we searched him and found on him these articles and a box of matches. The next morning I unlocked the door and went in; I asked him if any body was concerned with him; he answered no. I asked him where he got these things (the nippers); he answered, "on the Kanawha." I asked if this was the first attempt of the kind he ever made; he said, "it was." The boy had been drinking when brought in the night before, but he was not drunk.

Cross examined. He was delivered to me as an officer of the police. The conversation I have mentioned was Monday morning before he was carried to the Mayor's court.

William H. Nuchols, sworn.—I am one of the police officers of Richmond. On Monday, after examination before the Mayor, I carried the prisoner to the jail. I asked him why he did this; he said "he wanted money to get home, and had no other way." I asked him if he had applied to the gentleman with whom he came, or to his father, would they not have given him money.

He said, "probably they would, but he did not like to ask." He said farther that this was his first attempt. The morning after the arrest, a young man came and claimed the hat the prisoner had, saying it was his, and that the prisoner had said he wanted him to loan it to him, as he was going out after a girl.

Here the evidence for the prosecution closed.

For the Defence.—The first evidence was in writing, as follows : "The Attorney for the Commonwealth admits as in evidence, on the part of the prisoner, that he is a resident of the State of Kentucky—that he there bore a good character, and left there to come, and did come to Richmond, as one of the drovers of a number of horses and mules, and that there is no reason to believe that he ever had any acquaintance with Morris C. Faris or H. W. Now elsewhere than in the City of Richmond. The said Attorney, however, reserves the privilege of proving any admission of said prisoner, which is legal evidence wherever made, or of introducing any other legal evidence whatever."

This paper was read to the Jury.

William H. Freeman, sworn—My wife keeps a boarding-house ; our residence is about one hundred feet from Barns' grocery. I first saw the prisoner at my house, as a boarder ; he was at my house nearly a fortnight. Morris C. Faris and H. W. Now, came to our house about two nights before the 13th of October ; they were both tall young men, apparently about twenty-five years old, one stouter than the other ; I did not like their appearance ; the morning after this house-breaking, they left without paying their bill. Another gentleman slept in the same room with them. After these two men left, there was found in their room this paper. (Here *Young* interposed, and objected to the admission in evidence of this paper ; the Court examined it, and after a brief discussion between the Commonwealth's Attorney and the prisoner's Counsel, the Court decided that the paper was inadmissible. *Mr. Young* then consented that it should be read to the Jury.) It is as follows :

OCTOBER 13TH, 1850. RICHMOND, VA.

Dear Sir,—I take this opportunity of informing you that I am well at present, hoping that these few lines will find you enjoying the same blessing. I have no news to write at present, more

than we landed in Richmond Friday morning, on the packet, and got a seat of work, though I do expect to start to Norfolk in a few days in the Steam-Boat, and where I may go from there I don't know. I don't expect to return to old Prince Edward in some time. I must close my letter. Give my respects to Mr. Noell and family, and Mr. Soures and family. Hudson sends his best respects to his father, and mother, and sisters. I must close my letter. This wide world is my home.

Your respects,

MORRIS C. FARIS.

R. S. HINES.—*Sir*, I will send you what I am due in a short time. You need not be uneasy about it, sir. My best respects and kind and affectionate respects to your father's family and save the best part for yourself. I am going to start to Norfolk in a few days if nothing happens. Yours respectfully,

H. W. Now.

Wm. H. Freeman—examination in chief continued. The name of the man who slept in the same room was McSouly. I think I saw a conversation between the prisoner and one of these two men; one of them gave the prisoner his hat. Campfield's hat was drab, the other was black. Mr. Perkins brought this young man to my house; he paid all his bill; he appeared to be with Mr. Perkins. On Sunday evening, the 13th, the prisoner had been drinking liquor; I think he was not sober.

George Freeman, sworn—I am a son of Wm. H. Freeman; I live in the same house. On the 13th of October, I went up seventeenth Street with Campfield; during the evening I had seen him conversing with two men, the same two who afterwards went off from our house.

Mr. Gilmer.—Did you hear any conversation between the prisoner and a black girl that evening?

Young objected.—The Court said the question was admissible and might be answered, as the Commonwealth had given in evidence the prisoner's statements on a similar subject and the matter might bear upon the question of intention.

Witness.—I saw the prisoner talking with a black girl on Sunday evening; this was on the corner of 17th and Grace streets. Afterwards Campfield said—(*Young* objected; the Court deci-

ded that the prisoner could not give in evidence his own statements after his interview with the girl.)

The interview was about sixty yards from my father's house; this was about 5 o'clock in the evening. Barnes' house is about the middle of the square, but an alley runs by his house. I don't recollect whether it was light or dark that night.

Cross-examined.—The interview was a square from the corner near to Barnes' house.

Byrd Page, (police officer) *sworn*. *Gilmer*.—Mr. Page did you hear any thing said by the prisoner immediately after his examination before the Mayor?

Young objected.

Gilmer argued that the youth of the prisoner was to be considered in deciding upon the admissibility of his declarations whether offered in evidence for or against him. He referred to cases in which when young prisoners were brought before English magistrates, and after making confession refused to sign, their admissions could not be used in evidence against them. In this case the admissions of the prisoner had been received—admissions made under circumstances which might well be considered as amounting to *moral duress*—admissions made to Capt Wilkinson, who was "a most imposing looking officer," and whose very appearance might awe a young prisoner, and if these admissions were received, it was but just and fair that the subsequent declarations of the accused should be received to rebut them.

Judge Caskie.—The declarations of the accused are clearly inadmissible as evidence in his behalf, but I will recall Capt. Wilkinson to know from him more distinctly what were the facts at the time of the prisoner's admissions.

Capt. Wilkinson recalled.—There was nothing threatening in my manner or appearance at the time; I held out no promise to him of any kind; the conversation was as I have before stated it.

Wm. H. Freeman.—recalled for the defence. The two men left about 7 Monday morning; they brought no baggage; one was very upright in his form, with black hair; he wore striped pantaloons, a frock coat, high-heeled boots.

Wm. H. Nuchols recalled for the defence. Two men were at the Mayor's court talking with the prisoner; one of them, I

think, corresponded almost exactly with the description given by Mr. Freeman.

Here the evidence closed.

Mr. Young asked the Court to say that a breaking into a passage leading from a door to the upper part of a house occupied as a dwelling by persons was a burglarious breaking if done with a felonious intent. He cited Mayo's Guide, 142.

The Court gave the instruction as asked, but said that *in a criminal case* it was the privilege of the prisoner's counsel to argue against an instruction given by the Court at the instance of the Commonwealth, and that it would not be disrespectful in counsel so to do.

Young opened for the Commonwealth.

Gilmer, for the prisoner, commented upon the evidence, and urged the youth and destitution of the accused as in some degree extenuating the offence, if offence had been committed. He quoted a sentiment from Bulwer—"it is only by the candle held in the skeleton hand of poverty, that man can read his own dark heart." Among other points, he contended that the two men spoken of, were of suspicious character from the evidence before the Jury, that as one changed hats with the prisoner, it might reasonably be supposed they gave him the nippers—that it was highly probable one of these men forced the door and the boy entered without intent to steal, or any other felonious intent.

Young, in concluding, cited Roscoe's Crim. Evid. 347.

The Jury retired at a quarter past 8, and in about a quarter of an hour returned with a verdict of "Guilty," and ascertained the term of imprisonment in the penitentiary at five years.

When sentence was to be pronounced, and the prisoner was asked if he had any thing to say, he declared that "that chisel never did break that door."

Judge Caskie.—John Campfield, I have heard with regret the remark you have just made. You have been fairly tried, and, as I believe, justly convicted. Your youth renders your conviction and the circumstances which led to it matter of sorrow, but I cannot doubt that the verdict was righteous and just, and in accordance therewith I have only to pronounce the sentence of the Law.

TRIAL OF CORNELIUS SULLIVAN.

HON. JOHN S. CASKIE, JUDGE.

In the Circuit Court of Law for Henrico. Criminal Term.

| | | |
|---------------------|---|-------------------------------|
| Commonwealth | } | Saturday, November 2nd, 1850. |
| <i>vs.</i> | | |
| Cornelius Sullivan. | | |

For the Commonwealth, John B. Young.

For the Prisoner, Wm. P. Byrd and Joseph M. Carrington.

The prosecution was under Sec. 19th, Chapter 192, Code of Virginia, page 729.

"If any free person buy, or receive from another person, or aid in concealing any stolen goods, or other thing, knowing the same to have been stolen, he shall be deemed guilty of larceny thereof, and may be proceeded against, although the principal offender be not convicted."

The Indictment charged that on the 27th August, 1850, the prisoner received fourteen towels, seven pillow cases, one table-cloth, eight sheets, with sundry crockery and glass-ware (enumerated in the indictment,) the property of Norborne E. Sutton, and lately stolen from him by some evil disposed person, he, the prisoner, then knowing them to be stolen.

The accused was an Irishman, stoutly made but rather below the middle height, with black hair—pale and somewhat sickly complexion. His wife was in Court with him—a hale, fresh looking, young Irish woman, with bright complexion, large, full eyes and an open, and not very diffident expression of face.

The Prisoner was arraigned and pleaded "Not Guilty."

The following were the Jury:—Lewis Hill, Austin E. Turner, Hiram Bragg, Robert McClellan, James B. Shelton, Wm. H.

Minter, Jno. W. Bullington, Jno. A. Hurd, Wm. Hopkins, Rich'd T. Alvey, George Anderson, Rob't I. Smith.

For the Prosecution :

Francis R. Quarles, Sworn—Some time in August, 1850, I saw a negro man take some articles out of the basement of the City Hotel and conceal them under a wheel-barrow ; I watched him, he went up Franklin Street, and after a while returned and carried these articles, which seemed to be plates and dishes, into the back yard of the place where Sullivan lived. This was fifteen or twenty yards off, just across the street from the Hotel. He put them into a barrel in the yard. I did not see Sullivan, but the negro said something to somebody as he stood in the yard, which I did not understand. The negro returned and I then took hold of him and carried him to the City Hotel. I went with a young man, and we found several plates and dishes containing meat and other provisions, in a barrel in Sullivan's yard.

Cross-examined, by Byrd. This was very early in the morning ; the neighbours were not up ; I did not see Sullivan at all ; the plates and dishes had provisions in them ; I do not know what Sullivan's occupation is, but believe people board at his house ; I do not know that these articles were carried there by request of Sullivan ; I have already said I did not see him at all.

John C. Haley, police officer, Sworn.—On the 27th of August, 1850, I received a search warrant, given by Alderman Thomas Tyrer, authorizing me to search the prisoner's premises. Mr. Williamson, at the City Hotel, had told me if I found any sheets with a very narrow hem one way, and a very broad hem the other way, no doubt they were City Hotel property. I searched the premises ; up stairs I found 10 sheets, 1 table-cloth, 14 towels, 7 pillow-cases, and upon farther search, I found 4 tumblers, a lot of crockery-ware, 6 cups, 4 saucers, 2 white dishes and 5 white plates.

(Here a number of articles in Court were shewn to the witness.) These are the same articles I found ; the crockery and glass-ware was generally on the shelves in the house ; the sheets, pillow-cases and towels were up stairs ; I arrested the prisoner ; he said he had kept a large boarding-house in Boston, and that these were part of the things he then had. The prisoner had been living in this place, near the hotel, two or three months ;

he kept a sort of boarding-house; I had never been in the house before this search.

Cross-examined, by Byrd.—Where is the search warrant, Mr. Haley?

Witness—I suppose the Mayor has it.

Byrd—It ought to be produced.

The Court said a *Subpœna duces tecum* might go to the Mayor for it, but in the mean time the witness would be permitted to state what took place in consequence of the warrant, as it would not be necessary for him to say anything of its contents.

Cross-examination continued.—I think I found on the premises property such as was described in the warrant. I took into possession any thing identified by Mr. Williamson. I think sheets are mentioned in the warrant, it speaks of sundry things, the property of the City Hotel; the only description of the sheets given me by Mr. Williamson, was as to the hems, and that some were linen and some cotton; 3 of those found were cotton, 7 linen; the sheets were not marked any other way. The pillow-cases and towels had no mark; Mr. Williamson identified them; he said their pillow-cases were uncommonly large, as these are. The prisoner said I need not read the warrant—go ahead and make the search; it was after I found the goods, that he said he had kept a large boarding-house in Boston, there was no mark on the tumblers, but I sent to the City Hotel and found tumblers exactly corresponding with them; at the Wall Street Hotel there are tumblers like these, except that their bottoms are thinner; the other crockery had no peculiar mark, but was made by the same man, and stamped in the same way as the City Hotel crockery. I cant say what all these articles are worth. I dont think I would give twenty dollars for them, but I dont want them.

Re-examined by Young.—I found no articles in the prisoner's house like these; there was ordinary furniture in the house; no tumblers there like these; there were three beds in the house, the sheets were different from these.

Peter O'Neil, Sworn.—I am employed at the City Hotel. Part of my duties are to look to the dining-room. (The glass and crockery shewn to him.) I had missed articles of this sort at various times; these are precisely similar to those we missed.

Cross-examined.—I cannot swear they are precisely the same;

they are like them ; I cant say the things we missed were stolen ; they may have been either stolen or broken.

William Williamson, sworn.—On the morning of August 7th, on hearing from Mr. Quarles of what had occurred, I applied to Mr. Tyrer for a search warrant. I accompanied the officer through the house ; we found these things which the officer took and which, I believed, were those that had been missed ; the sheets were made with one wide and one narrow hem ; I never saw any like them ; the mode of marking them was suggested to Mr. Sutton by a gentleman who was keeping a fashionable hotel in New York ; I have been engaged for a long time in keeping hotels ; the pillow-cases are peculiarly large, exactly like ours ; the table-cloth precisely corresponds with others at the City Hotel ; so do the towels.

Young.—What is the value of these articles, Mr. Williamson ?

The Witness gave the value of each item, and on summing up, it was found that they amounted to \$26 83. The prisoner's house had no furniture corresponding with this ; his furniture was coarse ; I did not think he had any pillows that would fill these cases.

Cross-examined by Byrd.—I cannot say positively that these articles belonged to Norbornè E. Sutton, but I believe it, because he had lost precisely such ; there were no other marks than those which have been described ; I identify the pillow-cases by their size and quality ; the sheets by their hems and quality, the crockery by the stamps and the maker and its general appearance ; I will not state that other persons may not have other property like this—like all of it ; I think it probable other people may have such.

Norborne E. Sutton, sworn.—I believe these sheets and these other articles, generally, to be the property that belonged to the City Hotel. I kept the Hotel just before these articles were discovered ; these things correspond with articles that I had lost.

Cross-examined.—I never saw the prisoner before he was brought before the Mayor ; I was not the proprietor of the Hotel at the time of the search ; I cannot say precisely how many sheets were lost ; I can swear to the property as far as my best judgment will go ; I cannot say that these articles were the property of the City Hotel while I was proprietor, but I *can* swear

that a number of similar things were lost while I was there, and that I was proprietor of those lost. I went to Sullivan's once and looked at crockery there, and left the house determining to prosecute. Mrs. Sullivan followed me crying; she said she bought it in Boston, and at last I told her to go, I would not prosecute. I was advised by the proprietor of the American Hotel, in New York, to have sheets hemmed in the way spoken of; I do not believe any sheets are so hemmed in Virginia; I don't know but that such sheets might be found in Boston; I have slept in a great many houses in Virginia, and never saw any sheets so hemmed; I don't know but that there are pillow-cases as large as these in Richmond; I have no doubt that other persons, in Richmond, have made purchases of similar goods for the same purpose. I know nothing of Sullivan's habits or way of spending his time. I did not know that Mrs. Sullivan had a husband until I went to look at the crockery there; as soon as I entered the house, I asked if she had a husband, and she told me she had, but he did not stay at home much in the day. It was after this that I determined to prosecute, and I was induced to abandon the idea only by her entreaties.

Here the evidence for the prosecution closed.

For the defence :

Richard Lee, sworn.—I have very often seen the prisoner passing and re-passing; I believe he has been here six or eight months; he has often been in my store and bought things; his general reputation is that of an honest man, and a man of steady habits.

Sebastian Delarue, sworn.—I have known the prisoner since last winter; he rented a house from me; his general reputation for honesty before his arrest, was very good.

Cross-examined by Young.—I have never heard any thing particularly said about the prisoner's character.

John C. Haley recalled for defence.—I did not arrest Mrs. Sullivan, but she came up to the Mayor's Court and the Mayor thought it his duty to commit her; he sent her on to the Hustling's Court, where she was discharged.

The evidence closed.

The case was argued earnestly and at considerable length. On the part of the defence, the points chiefly pressed were,

- I. That there was no proof that these articles ever were stolen.
- II. That if stolen, there was no proof they ever were received by the prisoner himself.
- III. That if received by him, there was no proof that he knew them to have been stolen.

The Jury went out at about 5 o'clock, and returned at a quarter before 6, with the following verdict:

"We, the Jury, find the prisoner guilty, and assess his term of imprisonment at fifteen months."

The Court said the verdict might be amended if it was not in proper form, and if the Jury desired to amend it. And the Jury so desiring, the verdict was amended so as to fix the term of confinement *in the penitentiary* at fifteen months.

The prisoner's counsel excepted to the decision of the Court, permitting this amendment.

When the verdict was rendered, the wife of the prisoner sunk back as though in a swoon, and some time passed before she could be recovered by the use of restoratives. When she was in some measure restored, she uttered deep groans and cries of distress.

Wednesday, November 6, 1850.—A motion for a new trial was made by the prisoner's counsel, founded on an affidavit of Johnson Sullivan, a brother of the prisoner. The affidavit in writing was presented, but the Court requested that the affiant should personally appear and be sworn.

Johnson Sullivan then testified that Catharine Couly was a servant at the City Hotel, and left about two months ago—that the witness has learned facts from her—that Catharine Couly had said to him that she sold these articles to Mrs. Sullivan, but the witness *did not know* that Catharine Couly had purchased, or said she had purchased these articles for valuable consideration.

The Court.—Mr. Sullivan, are you aware that you have solemnly sworn in this affidavit, that Catharine Couly said to you that she had purchased these articles for valuable consideration?

Witness.—Oh, no! she never said that to me.

Here *Mr. Carrington* said, that justice to the witness required that he should state that the affidavit had been prepared upon the facts which the witness was believed to know, but that when read to him, the witness objected to that part of the affidavit, and re-

quired it to be stricken out, and that it was intended that it should be stricken out, but through inadvertence it was not done.

The Court.—I have often thought, and feel it my duty now to say, that greater care ought to be used by Counsel, in the preparation and presentation of affidavits like this. In future I may feel bound, to admit no such state of facts as an excuse, and to direct a prosecution to proceed against a party who shall thus make conflicting statements under oath. Upon the facts as proved in Court by the affiant, I see no ground for a new trial, and accordingly overrule the motion.

Sentence was pronounced upon the prisoner in accordance with the verdict of the Jury.

TRIAL OF HENRY B. ALLISON.

HON. JOHN S. CASKIE, JUDGE.

In the Circuit Court of Law for Henrico, County. Criminal Term.

Commonwealth

vs.

Henry B. Allison, Joseph Dowell and John Clare.

} April 21, 1851.

For the Prosecution, J. B. Young.

For the Prisoner, William W. Crump.

The Prosecution was founded on Section 15, Chapter 192, Code of Virginia. Page 729.

Sec 15. "If any free person steal any bank note, check or other writing, or paper of value, or any book of accounts for, or concerning money, or goods due or to be delivered, he shall be deemed guilty of larceny thereof, and receive the same punishment according to the value of the thing stolen, that is prescribed for the punishment of larceny of goods or chattels."

Sec. 16. "In a prosecution under the preceding section, the money due on or secured by the writing, paper or book, and remaining unsatisfied or which in any event might be collected thereon, or the value of the property or money affected thereby, shall be deemed to be the value of the article stolen."

The indictment charged the three persons jointly, with stealing, taking and carrying away, bank notes, the property of James M. McKenzie, on the 31st day of January 1851. There were five counts.

- I. The money was described as 18 bank notes of the value of \$160.
- II. " " " " 18 bank notes " " \$159
- III. " " " " 3 bank notes of \$20 each amounting to \$60, and 15 bank notes amounting to \$100.

IV. The money was described as 1 bank note of \$20, 1 other of \$20 and one other of \$20.

V. " " " " 3 bank notes of \$20 each, 1 of \$10, 7 of \$10 each, 3 of \$5 each and 4 of \$1 each.

The Prisoners, by their Counsel, announced their election to sever in their trial, and thereupon the prosecuting attorney elected to try Allison first.

Henry B. Allison was set to the bar. He was a short, thick man, with remarkably broad shoulders—large eyes somewhat protruding, and a bad expression of countenance. He seemed about 40 years of age.

Before Plea. *Crumpp*, for the defence, objected to the indictment that it did not sufficiently describe the property alleged to be stolen. It spoke only of "bank notes;" it should have stated of what banks—whether incorporated or not, and whether of Virginia banks or not, otherwise it could not be known that they were of any value. He referred to the 16th Sec., which decided the question of value by "the money due on, or secured by the writing and remaining unsatisfied, or which in any event might be collected thereon."

Young, insisted that the property was, according to approved precedents, sufficiently described as "bank notes," and that Sec. 16 did not refer to bank notes at all.

Crumpp rejoined, and after full argument,

The Court overruled the objection, deciding the indictment to be sufficient.

The prisoner, by his counsel, then pleaded specially that he had not been properly examined by an Examining Court according to Law.—Code of Va., page 764.

The Commonwealth's Attorney replied, the record of the Examining Court.

Crumpp demurred to the replication, on two grounds:

- I. That no certificate of the Committing Magistrate appeared.—Code of Virginia, Sec. 16, Chap. 204, page 763. Acts of 1847-1848, page 133, sec. 29.
- II. That one of the five Magistrates who sat in the Examining Court, had not been summoned. Sec. 3, chap. 205, Code of Va., page 764.

Young.—*I.* The *Warrant* of the Committing Justice, required by sec. 3, appears in the record. The certificate is no necessary part of it, is not the foundation of the Examining Court's authority, and need not appear.

II. Five Justices of the City sat according to sec. 4, page 765. It did not vitiate the Court that a Justice sat who had not been summoned.

Crump replied.

The Court overruled the demurrer, deciding that the prisoner had been properly examined.

The accused then pleaded "Not Guilty."

The following were the Jury:

E. L. Tompkins, Thomas Jones, Valentine Winfree, James A. Scott, George Lynch, Thomas Trowers, David A. Brown, Thomas Goolsby, John Clash, Thomas Stone, John Messler, John Pae.

For the prosecution.

James M. McKenzie, sworn.—On the night of the 31st of January last, I went, in company with Mr. George Watt, Jr., to the African Church, to witness an exhibition of Indians. By an unusual fact, I had all my money and my papers with me in my pocket. It was a cold night; we took our places in a pew some distance from the stage, where I thought I would be safe from pickpockets. Mr. Watt had warned me to guard against pickpockets, and I took my pocket-book out of my coat and put it in my pantaloons pocket, and held my hand there. After the exhibition it was announced that the Indian Girl would sell some pictures or other things at the stage. After some hesitation I went up; there was a great crowd; I still kept my hand on my pocket; I saw the man Clare, he pressed close upon me—

(*Crump.* I object to any statements as to Clare or his conduct; no connexion has been shewn between him and the accused.

The Court.—Some such connexion must be shewn before the evidence would be proper.)

Young.—Stand aside a moment, Mr. McKenzie. Mr. Handy.

Officer Edw'd G. Handy, sworn.—I am an officer of the police in Washington. On Saturday, the 1st of February last, I received a Telegraphic Dispatch from Mr. Mayo, (prosecuting attorney in the Hastings Court, Richmond,) stating that a gentleman

had been robbed, giving me some description of Allison, and asking me to endeavour to apprehend him. I went to the Southern Steam Boat on her landing, and saw the prisoner.

Crump.—I object; no proof has been given of any robbery or larceny.

Young.—I will go on then with Mr. McKenzie.

James M. McKenzie, recalled.—I held my hand on my pocket-book, in my pocket, among the crowd; a little boy handed me a ninepence and said, "Mister, you are taller than I am, please reach up and buy me a picture;" perhaps the little boy knew that I felt an interest in youth, as I have long been engaged in teaching; I forgot my pocket-book—took my hand out and handed up the ninepence and got the picture for the boy—when I put my hand back, my pocket-book was gone! I recollected that just before I had felt some one pressing his hand between Mr. Watt and myself, and on turning round I saw the man who had been pressing on me all the time, retreating and keeping his eye upon me.

Crump.—Was the prisoner present; did you see him?

Witness.—I do not know that I did.

The question was raised and argued, whether the witness could state any thing said or done by Clare.

The Court.—Unless the prisoner was present, or unless a conspiracy be proved to have existed among them at the time—the conduct and declarations of others cannot be given in evidence against the prisoner.

Examination continued.—I lost \$159 or \$160; I am not positive which amount, because I had had three twenties, one ten, and either seven tens and three fives, or eight tens and one five, and either four or five one dollar notes. (Here a number of bank notes were shewn to the witness.) I looked at my money every day for eight or ten days, and became quite familiar with its appearance; one of my twenty dollar notes had a little piece torn out of the margin, like this one; I have no doubt as to this one; I cannot swear so positively as to the rest, but I am so confident as to all, that if my salvation depended on it, and I were compelled to swear either way, I would not hesitate to say that these are the notes I lost.

Cross-examined.—I do not recollect distinctly what occurred

before the Mayor; I don't recollect being there asked as to the number of each denomination of notes; I recollect that I have stated something of the excitement and confusion attendant on the scene at the African Church; I *am* subject to an affection of the head, which sometimes distresses me much; after it was stolen, I first saw the money again the second time I testified before the Mayor; I think I gave such a description as I have mentioned, to Mr. Mayo, before he telegraphed, and this was before I had seen the notes after they were stolen; my account to Mr. Mayo was, that there were three twenties and one ten in one roll, and that the majority in the other roll were tens; I saw the money on Wednesday after the Friday, when I lost it. I sold a coloured girl for whom I think I got \$580, deposited \$500 in bank, and kept the balance, and I think these three twenties were part of that balance; I believe Mr. Dickinson sold the girl; this was less than a month before I lost it. As to one of these rolls, I have no more recollection of this bundle of tens as mine, than I would have of any other tens, similar in appearance; it corresponds with mine.

Edward G. Handy, recalled.—Mr. Woolward went with me to the boat; the prisoner came off and went in an omnibus to the Baltimore Depot, about a mile from the wharf; we followed him; at the depot I stopped him and told him I wished him to come with me; he immediately did so; I put him in a hack with Mr. Woolward and myself. On the way, he asked what he was arrested for; I answered him that he probably knew better than we did; he asked if we could not come to some terms; I answered no, he could have no terms from me. While in the hack I saw him take something out of his pocket and put it behind him; when we got to the Mayor's office, Mr. Woolward got out first; I told the prisoner to get out, he hesitated but finally got out. I then looked behind the cushion of the hack and found a roll of money; I think \$199 in all. (Here the money which had been shewn to Mr. McKenzie was shewn to the witness.) I marked each note that I might identify them thereafter: (examining them.) Yes, sir, all these notes were in the roll I found.

Cross-examined.—The telegraphic message said, a gentleman had had his pocket picked at the African Church; that two parties, supposed to be guilty, had been arrested; that another had

escaped ; described as a short, stout man, with head somewhat bald ; I think the amount was stated ; I did not know that two gentlemen had been robbed, or I would have kept the rolls separate.

Officer James F. Woolward, sworn.—My statement will be pretty much Mr. Handy's, with the addition that I took some \$25 or \$30 more from the prisoner, with a pocket book : (here the pocket-book and money were shewn and identified ; the pocket-book, among other papers, contained Park Benjamin's Poem, "To My Mother," apparently cut from a newspaper!)

Peter Wren, sworn.—I am employed at the Columbian Hotel ; the prisoner arrived there by the Southern cars on the 28th of January, and left the 1st of February by the Northern cars. On the 19th of December, 1850, he arrived at the Hotel in company with Dowel, and on the 15th of January, Allison, Clare and Dowel all arrived there together.

James M. Sublett, sworn.—The prisoner came to the Columbian on the 19th December, in company with Dowel ; they paid their bills and went away. On the 15th of January, Allison, Dowel and Clare all came together ; they asked for separate rooms on each occasion, but the last time we were crowded and I put them all in the same room ; they did not seem to have any business ; they did not often speak to each other though I could perceive they were acquainted. On the 28th of January, Allison came alone and got a single room ; on the 29th, Clare and Dowel came together. The last two staid until they were arrested, 31st January. Allison left 1st February, without having given notice of his intention to leave, although we have notices put up in every room, that guests intending to leave early in the morning, may have early breakfast, by giving notice the night before.

Cross-examined.—They staid more than a week, from the 15th January ; we presented their bills at the end of a week and they paid them ; I never saw them in the street ; no one came to see them or asked for them, but that was not altogether unusual ; I saw nothing in their conduct disorderly, or other than respectable ; they did not stay much together, but sometimes in passing exchanged some words. I think they all left together after the 15th January. As a general thing, passengers give notice who are going by the Northern cars. Allison seemed hurried because

he had not more than fifteen or twenty minutes to get off.

Question by a Juror.—Each had a carpet bag; I was present when their carpet bags were opened; besides apparel they had nothing except blacking-brushes and razors.

George Watt, Jr., sworn.—I am pretty positive that I saw the prisoner at the Exhibition, in the African Church, the night of the 31st January. I went with Mr. McKenzie; there was a great crowd; I cautioned him to take care of his pocket-book. After the exhibition, they offered some pictures for sale, two or three of us went up to the stage; while there, there was a considerable pressure on me; I was standing against the platform and the pressure became painful; I asked McKenzie “why this pressure?” I saw two men who were pressing on McKenzie, as I thought, without necessity and looking at them, I asked them to desist. They put on a sort of “daring, insignificant grin,” and still pressed; I threw myself forward to relieve myself from the painful posture in which I was, and succeeded; immediately afterwards I heard a sort of scuffle, and looking round, saw McKenzie, with his arm raised, reaching out as if to seize some body—

Crump.—I object to any statement as to Clare and Dowel.

Young.—Mr. Watt, did you see the prisoner?

Witness.—I believe I did see the prisoner that night, but I can't locate him.

George Sublett, sworn.—I was at the African Church that night. At the time of the pressure I was about three feet from Mr. McKenzie; I saw no necessity for a pressure; my arm was in a sling from a hurt, and I avoided the crowd; as I was advancing I met a man pressing towards me elbowing his way, when there was no need for it; I stood aside and made way for him. The man was not tall, not as tall as I am, but broad and stout; I was struck with his appearance, and when afterwards I saw Allison in the Mayor's Court, I believed it was the same man.

Cross-examined.—I am sometimes at the Columbian, but not at meal times; I never saw the prisoner there; the man had not gotten out of the church before I heard Mr. McKenzie cry out he was robbed; I did not see the man's face, or the color of his hair; I think he had a hat on; I never recognized him except by his broad shoulders; I was with a lady, and when the confu-

sion commenced she was very much alarmed and begged me to leave with her; I got up on a bench and staid about five minutes. There was much confusion, and propositions to search were made; I did not see any little boys in the aisle, nor did I see Dowel or Clare. I think I first mentioned the matter to my brother that night or next morning.

Young.—I think we have now in the case, evidence tending to prove a connexion of the prisoner with this affair at the church.

The Court.—You can go on, sir.

McKenzie, recalled.—I turned and Clare was retreating and watching me, in this way—(here the position was shewn)—I reached out after him; I was so eager that my hand fell down by his head, crushing his hat, and I seized his collar; I said, "You have got my pocket book;" he said, "I hav'nt;" I said, "You took it;" after a moment he said, "Search me."

Crumph.—These statements are not evidence; it is not pretended that Allison was then present, and they cannot be given in evidence on the ground of conspiracy, because even if any conspiracy existed, its object had been accomplished the moment of the theft and the conspiracy had ceased; the statements of one conspirator, made *after* the conspiracy is ended, are not evidence against another conspirator.—II. Starkie on Evid. 233. I. Greenleaf's Evid. 187-188.

After argument, *the Court* said Mr. McKenzie might state any *facts* connected with the loss and search, but not declarations of Clare or Dowel.

Witness.—I searched him but did not find my pocket-book, and did not expect to find it; I searched both Dowel and Clare at the church and did not find any of my property upon either of them. I had on a pair of home-made pantaloons which were very "sparing in every thing," and had very shallow pockets.

George Watt, Jr., recalled.—Seeing him catch Clare, I caught hold of the other man that I had seen pressing upon Mr. McKenzie. As soon as possible I went to the cage and got Captain Jenkins and the police to arrest them. When Allison was brought back here to the jail, I went and asked the jailor to let me see him, and the moment I saw him I recognized him as a man I had seen at the Church; I have a peculiar faculty for remembering faces.

Cross-examined.—There were very few persons immediately around the stage; these two persons were the only ones crowding on McKenzie; no one was crowding on them; the nearest persons I saw to them were some boys. Clare had on a cloak and was in a leaning position when I saw him.

P. P. Winston, one of the Sheriffs, sworn.—This morning when I was walking round by him, Allison asked me what I thought he had better do; he said he thought they would convict him and let the others off; he said he received the money from the man whom Mr. McKenzie seized at the Church; he asked me if I thought he had better plead "Guilty;" I told him I thought as he had stood so far, he had best plead "Not Guilty;" he said he had been advised not to plead by his Counsel. (This last statement is supposed to have referred to the advice of his Counsel not to plead, until the preliminary questions as to the Indictment and the Examining Court had been disposed of.)

When Mr. Winston's evidence was heard, *Mr. Crump* stated that he considered his office and his duty as ended; as the prisoner had thought proper to take his case into his own hands, he considered himself no longer bound to act as his Counsel and should leave him to the Jury.

Young submitted the case.

The prisoner said to the Jury, that he was not concerned in the matter; that he was not at the Church; that the money was handed to him by a man named Humphreys, and that he was innocent.

At about half past 9, the Jury retired, and in a short time returned with a verdict of "Guilty," and ascertained the term of confinement in the penitentiary at five years.

On Tuesday, April 22nd.—Dowel and Clare were tried on the same indictment, but as the report of their trial is to a great extent repetition of the evidence above given, it is here omitted. They were convicted, and the term of their confinement ascertained at four years.

Henry B. Allison was tried during this term for larceny of a sum of money from J. B. Kee, a member of the Virginia Legislature. He was convicted, and a farther term of two years confinement was assigned him.

On the Indictment in this last case, a "*nolle prosequi*" was entered as to Dowel and Clare.

On Friday, April 25.—The Judge pronounced sentence on the three prisoners. In Allison's case, he alluded to its peculiar circumstances, which had furnished one more proof how often the "very fruits of crime are turned to gall and wormwood upon the lips of the criminal." He had escaped with the money, while his accomplices were instantly arrested; to other's eyes and to his own, he perhaps seemed the most fortunate, yet the result had been that his prey was the means of his conviction, and his punishment was more severe than that of his comrades in crime.

TRIAL OF WILLIAM P. ADCOCK.

HON. JOHN ROBERTSON, JUDGE.

In the Circuit Court of Law for Henrico. Criminal Term.

The Indictment in this case having been found while Judge Caskie was the prosecuting Attorney of the Court, Judge Robertson, of the Court of Chancery, for Henrico county, sat on the Trial, according to sec. 10, chap. 158, Code of Va, page 619.

Commonwealth }
 ^{vs.} } April 28, 1851.
 William P. Adcock. }

The prosecution was under Section 28, chap. iv. Sess. Acts, 1847-48, page 102-103.

“Any carrier or other person, being free, to whom any money, goods or other property, which may be the subject of larceny, shall have been delivered to be carried for him, or any other person entrusted with such property, who shall embezzle or fraudulently convert to his own use, or shall secrete with intent to embezzle or fraudulently convert to his own use any such money, goods or other property, either in the mass as the same were delivered, or otherwise, and before delivery thereof at the place at which, or to the person to whom they were to be delivered, shall be deemed by so doing to have committed larceny thereof.”

The Indictment charged that the accused, “being a carrier for hire,” on the 20th of September, 1848, embezzled one box, containing sheetings, shirtings, linsey, tweeds, &c., the property of Word, Ferguson and Barksdale, which had been delivered to him to be carried to Buchanan.

For the prosecution, John A. Meredith, (in the absence of John B. Young, Commonwealth’s Attorney.)

For the defence, Robert G. Scott, Irving & Johnson and Wm. P. Byrd.

The prisoner appeared to be about 35 years of age; he had coal black hair and dark eyes, a freckled skin, and cheeks somewhat hollow; he had been confined in jail a considerable time, and is said to have suffered with sickness lately. On his arraignment he pleaded "Not Guilty."

The following were the Jury.

William Cullingworth, Jr., John Braugh, John Lindsey, William Bethel, John Via, James H. Britton, John Nettles, Robert J. A. Smith, Richard Tinsley, Ryland Ford, George Richardson, William M. Loving.

For the prosecution.

James B. Ferguson, sworn.—I am one of the firm of Word, Ferguson & Barksdale. On the 12th of September, 1848, a box of goods was put up at our store and marked to Robert M. Ayres & Co., Buchanan. On the morning of the same day a coloured man, who called himself Alick, and said he was the head man on board the canal-boat, General Scott, called at the store and said he would take the box and it would be safely delivered at Buchanan. Accordingly the box was delivered, but our young man whose duty it was to attend to the delivery, failed to take a receipt for it. About fifteen days afterwards, we received a letter from Ayres & Co., announcing that the box had not reached them; we then ascertained that we had no receipt, and all we had was the statement of our young man, that he had delivered the box at the boat. I went up on the basin and saw Adcock, who was captain of the boat, General Scott; he said he knew nothing of the box; I then asked him if he knew where his head man Alick was; he said he did not know. In a few days he came with his head man to my store, and I immediately recognized Alick as the man who had called; I got a warrant to arrest him, but thinking I could get farther information on the subject, I asked several of the captains of boats running on the canal, to let me know if they heard any thing of it. In about ten days I heard from a man who had been on one of the boats, that a box of goods had been opened on board the General Scott. I got a buggy and went to New Market, where I found the General Scott and Captain Adcock; I procured a search warrant and went aboard; we told the captain of our business; he said we could search, but we would find nothing; he made no farther

objection. We searched, and under his bed, I found some sheeting and osnaburgs which had the private mark of Word, Ferguson & Barksdale, and in his chest, which he said was his private chest, I found some fringe, spool cotton and other articles, which had our private mark, and which I do not doubt to have been a part of the goods that were in that box. Adcock then said that he supposed his head man Alick Greenley had taken the goods, and he thought it probable if I would go after him I would find either the goods or the money for which they had been sold. I went to Greenley's house and there I found forty dollars in money; the only article found there that I thought probably belonged to the goods lost, was a little worsted cap, commonly called a Russia cap. I carried Greenley to Scottsville, and there Mr. Blair told me that Captain Adcock had put out this box at his place on Sunday, and had afterwards taken it away. This induced me to arrest Adcock, and I had him brought to Richmond.

Cross-examined by Scott.—These goods were sold to Ayres & Company. They were to pay the freight on them; we do not commonly pay the freight on goods so sent away, but we pay the drayage and toll and charge them; we forwarded a bill of these goods to Ayres & Co.; we failed to take a receipt as I have said; we did not pay the toll at that time, waiting for the captain to come down, but I suppose he passed the toll-house without difficulty, as he had on wood on freight for the James River Company; I do not know what the boat was loaded with as she came down, but when I saw Adcock first, the boat was loaded with iron pipe. It was in about 15 days that Adcock was at our store; I don't recollect whether he came voluntarily or I called him in, but he asked if we had heard of the goods; when I was searching, I did not search Adcock's house particularly; I heard that his wife was very respectably connected and wished to avoid distressing her if possible. We credited to Ayres & Co. the money I got from Alick Greenley, and we arranged the balance due on their account for these goods by a compromise.

Matthew Blair, sworn.—About the middle of September, 1848, perhaps the 16th or 17th, Mr. Adcock, captain of the General Scott, brought a lot of goods to me in Scottsville; a black boy came and told me the boat had some goods for me, and they wanted me to take them; this was on Sunday, and according to

my invariable custom on that day, I refused to receive them. After sending a white boy (I think, named Roberts) to me, Adcock came himself, and earnestly begged me to receive the goods; he put them out on the platform; it was raining and the goods being very heavy, I gave him the key of the warehouse and told him he might put them in there, and if all turned out right, I would pay him the freight some other time; on examining the next day, we found all the goods for me right, and there was one box over, marked Ayres & Co., Buchanan; as Adcock came down I told him of this box; he said he was glad to hear of it, as he had been a box short at Lynchburg; he asked that it might remain there until he called for it on his way up; he returned from Richmond heavily laden with pipe for the Staunton Water Works; I had the box put out on the platform for him; and after some delay in discharging and receiving freight, he took it off. I informed Mr. Ferguson of these facts as he has told you.

Cross-examined by Scott.—I did not know what he put out on the Sunday alluded to; I think it was about a week before I saw Adcock again; I do not recollect whether there was any interruption of navigation at that time; it generally takes a night and two days for a freight boat to go from Scottsville to Lynchburg; as she came back I do not know what his boat was loaded with; I do not know, of my own knowledge, that he remained with the boat as she went to Lynchburg; he collected the freight on my goods as he came down, and was then informed about the box. I am sure it was on his trip back from Richmond, that he had the box re-delivered to him.

By the Court.—I was present when the box was taken out and helped to take it out of the warehouse.

Littleton Roberts, sworn.—I was on the General Scott; on the first or second trip I was on, we went to Scottsville; we got there Sunday; this box was put off there by mistake; we went on to Howardsville, I think it is, but I don't know much of the names of places up there. We returned to Richmond and took on a load of pipe; we went to Scottsville and took off the pipe and took on this box again; we went on up, I forget how much farther, and then came back to Richmond; He didn't take on much load in Richmond after the fuss about the box; he hurried out through the gage-house; the box as we came down was put

under the deck ; when we got up by General Cocke's, I was out driving on the tow-path, and I heard some knocking on the boat ; I don't know what the knocking was, but when I came aboard I saw a box open, and some of the goods were under his bed and some were in his cabin ; he went on and hid the box and goods under the stable deck ; he seemed *afraid* he would be caught ; when he got up to his house he stopped, some of the goods had got wet, and he took all the goods into the stable ; he sent on the boat and hands to Lynchburg ; I left the General Scott in Lynchburg, and got a place on the James B. Renswick ; I can't speak positively as to the box being taken off any where else, but I know it was taken off in Scottsville ; the goods were hid by the black man Alick and the Captain. Alick was head man ; I was driver.

Cross-examined.—When we went on to Howardsville, I don't know whether we went farther or came back ; the third time, when the box was broken up, we *did go* on from Howardsville. The first trip, I think we took off all our freight at Columbia and Howardsville, and that we did not go to Lynchburg ; the second trip, I think we went to some places above Scottsville ; when we came down, I think we brought down some tobacco ; I don't know where it was taken on ; the third trip I think we carried some plaster and some bacon ; Adcock stopped at Howardsville ; there were two black men on the boat, one of them was Alick Greenley ; Alick and I quit about the same time ; I quit in the day time. We carried the goods on in the stable ; Adcock said he would follow on soon ; I said she didn't take on *a load* the third time ; we took on a little ; I didn't hear any thing about the box till we were about to start ; when we were in Richmond, the box was under the cabin deck ; under the stern deck ; to get to it, you would go down into the cabin and go right under the deck ; at Howardsville there might have been some little thing taken off, but I do not remember.

James B. Ferguson, recalled.—I was at New Market some time in November ; there I found the General Scott on her way down.

The evidence for the prosecution closed.

For the defence :

Richard Reins, sworn.—I met Captain Adcock in Lynchburg,

in the fall of 1848; I mentioned to him that I had lost some goods, and he said that his boat had been robbed.—

The Court.—Do you offer in evidence for the defence the statements of Adcock?

Scott.—This was before he was charged with any offence, and when he was under no motive to misstate the facts. After argument,

The Court said the statements of Adcock were inadmissible.

William B. Roberts, sworn.—I reside in Howardsville; I saw Adcock in the fall of 1848; he came up to Howardsville and unloaded something there, and afterwards went off to take up some pig iron; when in Howardsville he complained of being sick and stopped, sending on the boat to Lynchburg with Alick; there might have been ten days between the two trips; the last time I don't remember seeing Littleton Roberts aboard the boat; until this thing occurred, I never heard Adcock's honesty doubted; he had stood very fair among his neighbours; General Cocke's is in Fluvanna county.

Cross-examined.—When he stopped in Howardsville, he staid about ten days and said he did not know what kept his boat so long; Howardsville is in Albemarle county.

Royal Blackburn, sworn.—I saw Alick Greenley in jail and he had a considerable sum of money; he had a pretty stout roll of notes; I looked over his shoulder and saw a \$30 note; don't know about the other notes.

William A. Scott, sworn.—I have known Adcock since 1844 or 1845; I never heard any charge against his honesty; I did not consider him a man of much respectability; he was indolent and fond of drink.

Charles Scott, sworn.—I have known Adcock about the same length of time that my brother (W. A.) has; I can't say I have known him very well; I have always regarded him as an honest man, and at first I thought him a business man, but lately not so much so.

The evidence closed.

The case was argued at length by *Meredith* for the Commonwealth, and *Johnson, Byrd and Scott* for the prisoner.

The Jury, after retiring about an hour, returned with a verdict.

They found the prisoner "Guilty," and ascertained his term of confinement in the penitentiary at one year.

Notice was given of a motion for a New Trial.

On Monday and Tuesday, May 5th and 6th, 1851. The Court (Hon. John Robertson on the bench) heard the argument upon the motion for a new trial.

Henry P. Irving.—We move on two grounds :

- I. That the goods are proved to be the property of Ayres & Co., and not of Word, Ferguson & Barksdale, as laid in the Indictment.
- II. That the offence, if committed at all, was not committed within the Jurisdiction of this Court.

On the first point, *Irving* cited authorities.—The indictment must set forth *the owner*, and it must be so proved.—Starkie's C. P. 213, 223, 74. Archbold's Crim. Plead. 211, 213, 215: 324 for form of indictment; Roscoe's Crim. Ev. 584-585; the goods were not the property of W., F. & B.—Angel on Com. Carriers 465, 468; Chitty on Contracts, 438, 484. Nor can the doctrine of *stoppage in transitu* avail the Commonwealth.—1. Selwyn's N. P. 347. 2nd Selwyn 518, 521 Nor was there any *special property* in the goods left in W., F. & B. which would support the indictment.—Smith's Mercantile Law, 502 and notes 501.

On the second point *Irving* cited Roscoe, 403.

Young, against the motion.—There may be a distinction between the rules of pleading, and proof in larceny and embezzlement—Archbold's Crim. Plead. Edit. 1846, 342, 328, 130. Side 282, 180. New Code, 770. 2 Va. Cases, 396. Is the allegation of property in one man or another, *descriptive* and so necessary to be proved? But if necessary, there is sufficient proof. Word, F. & B, had yet an interest; they had not so delivered these goods as to furnish to Ayres & Co. an adequate remedy against the carrier.—Chitty on Contracts, 127-128. The right of stoppage in transitu might also apply.

Scott, for the motion, replied, citing Archbold's C. P. 341, 328, 337. Stat. of George IV. 2 East's P. C. 650. King v. Carson. Russ. & Ryan 303. Starkie's Cr. Pl. 229. Angel's Com. Carriers 465, sec. 497. There was absolutely no interest in W., F. & B. from the time the goods were packed and delivered to Adcock.

The Court.—It has, I think, always been held necessary in prosecutions for larceny, to allege the property as in the real owner, and to prove it, if the Commonwealth had the means of knowing who the owner was. I do not see why a different rule should prevail in embezzlement, more especially as our Code makes that offence a statutory larceny. This being the rule, the proof seems insufficient and variant. Word, Ferguson and Barksdale had sold the goods and charged them to Ayres & Co., and by their (A. & Co.'s) expressed or implied authority, had delivered them to the carrier. I think the property was fully vested in Ayres & Co., and that they had full remedy against the carrier, though no receipt was retained. I do not perceive that a member of the firm of W., F. & B., would have been incompetent to prove the delivery, but if he were, the delivery might have been proved by their young man, or the possession of Adcock might have been proved by Littleton Roberts. There seems, then, to have been no special property remaining in Word, F. & B. The right of *stoppage in transitu*, does not apply; that right gives no interest in, or even lien upon the goods; it is a mere right *dependant* for its exercise *upon the contingency*, that the vendee shall become insolvent before the goods are delivered to him. There is no proof that any such state of facts existed here. With these views, I feel compelled to set aside the verdict and grant a new trial.

(The question of Jurisdiction was very little pressed; it is presumed a new trial would not have been granted on that ground, but I do not find in my note any allusion to it as made by the Court.
R. R. H.)

(After the above note was in type, *Mr. Young* informed me that the Court, in the course of the argument, intimated very clearly that the question of Jurisdiction need not be argued for the Commonwealth, and that if the case rested on that ground alone, the motion for a new trial would be overruled. R. R. H.)

TRIAL OF HARRIET HOOPER.

HON. JOHN S. CASKIE, JUDGE.

In the Circuit Court of Law for Henrico, County. Criminal Term.

Commonwealth
vs.
Harriet Hooper. } Wednesday, April 29, 1851.

For the Prosecution, J. B. Young.

For the Defence, R. G. Scott, T. P. August, M. Johnson.

The prosecution was under Sec. 9, chap. 191, Code of Virginia, page 724.

"If any free person maliciously shoot, stab, cut or wound any person, or by any means cause him bodily injury, with intent to maim, disfigure, disable or kill, he shall, except where it is otherwise provided, be punished by confinement in the penitentiary not less than one nor more than ten years. If such act be done unlawfully, but not maliciously, with the intent aforesaid, the offender shall at the discretion of the Jury, if the accused be white, or of the Court if he be a negro, either be confined in the penitentiary not less than one nor more than five years, or be confined in jail not exceeding twelve months, and fined not exceeding Five Hundred Dollars."

The Indictment contained four counts;—the first and third in various ways charged that on the 24th February, 1851, the accused maliciously stabbed Elizabeth Mitchell with intent to maim, disfigure, disable and kill;—the second and fourth with like varieties, charged the act as done feloniously and unlawfully, but not maliciously.

The accused had been bailed by the Hustings Court and appeared in discharge of her recognizance. She seemed 25 or

26 years old, had blue eyes and rather well shaped features. She was dressed in a figured silk of green, with a drawn silk bonnet trimmed with green. On being arraigned she pleaded, "Not Guilty."

The Jury were as follows:

Samuel Wortham, James T. Cox, Washington B. Ross, H. P. Taylor, Josiah D. Smith, Fred. Weidemeyer, Littleton B. Reid, Henry L. Reeve, Thomas Crafton, Joseph Vaughn, William Crafton, E. B. Chiles.

For the prosecution,

Elizabeth Mitchell, sworn.—On Sunday night Miss Julia Dye walked out; when she returned Miss Harriet Hooper told her that I had been swearing in the parlour; Miss Dye said it was against the rules of the house; I said I didn't do it; she said I did. The next morning at the breakfast table I asked one of the young ladies if I had sworn in the parlor; she said she didn't hear me; Miss Hooper said I did, and then she abused and jawed me and came round to me and pulled me down by the hair. Then Miss Dye parted us, and Miss Hooper said if Miss Julia didn't want us to fight she wouldn't. Afterwards she said she would kill me, and she would cut me up in pieces, so that no night-watchman should ever know it, to have her name in the papers. Then I went up stairs and some one of the young ladies said if she were me she wouldn't take as much as I had taken, and I came down and said, "Now you have had your revenge I will have mine." She said, "if you will let me go up stairs I will fight you," but I opened my sack and told her I had no weapon and she must not have any. Then she started to go up stairs and I caught her and pulled her back and pushed her up against the wall and slapped her on the face. Then we were parted, and she said she wasn't angry now, and went up stairs. I had heard her say she would kill me; I went up stairs to dress to go and make complaint at the Mayor's office. When I came down and was standing in the parlor, waiting for a hack, Harriet came up near me, and as I passed her, she stabbed me in my right side. I staggered back, and as she went up stairs I heard her laugh.

Cross-examined by Scott.—Miss Julia Dye is now in Lynchburg. Miss Higgins was there when it happened, she is now sick in

bed; Miss Wright has gone away; Miss Dye kept the house; Harriet Hooper paid twelve dollars a week board; it was against the rules of the house to swear in the parlor; at the breakfast table I asked a young lady if she had heard me swear as I have told you. Harriet Hooper abused me; I abused her back; I didn't curse her; the worst I said was to call her a mulatto, and after that she pulled me down by the hair; after I went up stairs Frances Wright said I ought not to take it, and then I began to get angry. I had gone up to fix my room, and I had a towel which I generally put on my head when I fixed my room; Miss Wright tied the towel round my head and then I went down.

Scott.—You went down in fighting trim, Lizzie, did not you intend to fight?

Witness.—I had said to Miss Dye I did not want to have any Court business, and I thought we ought to settle it here. She said "go on and settle it between yourselves." If Harriet Hooper had asked my pardon, we would have settled it that way, but if she didn't I intended to fight. I did not see any lamp and I don't know that the room had been cleared for a fight. I did not hear her say she didn't want to fight, until I pulled her back, but when I threw her down on the sofa, she said several times she did not want to fight; she was weak and not angry. When I went up stairs after our fight, I intended to have her taken up, and when I came down I was quite angry.

Re-examined by Young.—I was going to have her arrested because she threatened to kill me; she said she would kill me if it was ten years to come. When I came down, she was sitting in the window; she got up and came to me as I was going out, and stabbed me; I was sick four or five weeks; Miss Higgins has been very sick, and is still; she was very much burned by an accident with burning fluid for lamps.

Mary Fitz, sworn.—I saw the quarrel at the breakfast table; I saw them fight, and Miss Dye parted them; I saw Miss Elizabeth Mitchell come down with her head tied up, and she said to Harriet Hooper, "you have had your revenge and now I must have mine;" Harriet said, "I don't want to fight, I am weak and not well, and my passion is over now;" and then I saw Elizabeth Mitchell pull her back and they fought on the sofa and against the wall. When Harriet came down, before this, I saw

her pay her board to Miss Dye, and she said she was going to leave the house; they did not injure each other, and there was not much fight; they went up stairs; then, fifteen or twenty minutes passed, and Lizzie Mitchell came out of Miss Dye's room and asked the girls if the hack had come; she said she was going out to get a warrant. Harriet Hooper was sitting in the window, and as Lizzie Mitchell went out, I saw Harriet go up to her and stab her; I saw her raise her arm. (Here a knife was shewn to the witness, it had a blade about four inches long and a spring in the back to keep the blade firm when open; on the blade was an inscription, "The Real IXL knife.") *Witness*—I have seen that knife before; I was with Harriet Hooper about a week before this affair, when she bought it.

Cross-examined.—They abused each other equally much; Harriet said something about Lizzie being in a house with coloured people, and Lizzie said, "I have never been taken for a mulatto as you were in Baltimore." When Elizabeth came down with her head tied up, they said what I have told you; I think Lizzie said, "you *shall* fight; I will make you fight:" Harriet went towards the door, and Lizzie went and shut the door; I did not see any blows, but Elizabeth threw her down on the sofa and had the best of the struggle; I don't know who went for the hack.

By Young.—The remark about a mulatto was made after Lizzie came down with her head tied up, and while they were quarrelling. I think I heard Harriet Hooper say, if she touched her she must abide the consequences; I think she said if Lizzie didn't let her alone, she would cut her to pieces, and that she would have her satisfaction if it was ten years to come.

Cadmus Johnson, officer of police, sworn.—I was informed of this affair and went to the spot; I was told she had gone to Miss Louisa Dunton's; Mr. Tyler and I went there, and searched the house pretty thoroughly, but didn't find her; one of the crowd said she had not come out, so we looked farther, and after a while Miss Dunton came and asked if we were satisfied. I said we had looked every where except in one place, and we would be satisfied if she would let us look in the water-closet; she said she had not the key, but she would get it for us; she called a girl, I think, by the name of Virginia, and after a time this girl came and gave us the key and told me she was in there, but we

must not let Miss Dunton know. I found Harriet Hooper in there; her dress seemed out of order and she asked me to let her dress, which I thought it right to do. I went over to Miss Dye's and there received from her this knife with which the blow is said to have been given.

Cross-examined.—Her hair was disordered when I found her, and she seemed not dressed.

Officer Geo. W. H. Tyler, sworn.—A message about this matter was received at the Mayor's office; Mr. Young, Mr. Johnson and myself started; I ran on to Miss Dye's; the first thing I saw was the knife; Julia Dye had it; 'twas very bloody, and the handle (horn) seemed to have been recently broken; (the knife was shewn to him,) this is the same knife I saw. I returned to the Mayor's Court before the prisoner was taken from Miss Dunton's, but I went down to the jail with her. I think she asked if I knew how Lizzie Mitchell was, I answered that I understood she was in a precarious condition; some one else asked her, (I think) how she came to be led away to do such a thing; she said she hoped she would not die; she did not wish her to die, but she did not care for anything else; I think she farther said, that "Elizabeth Mitchell had treated her so badly or abused her so much that she could not help it."

Cross-examined.—I think this was all she said.

W. D. Haskins, M. D., sworn.—I was called to see Elizabeth Mitchell a few minutes after the blow was given; I found her lying on a bed, very pale and very much besmeared with blood: I laid bare the side and found a small external incision; I then enquired into the circumstances and was told she was stabbed with a knife which was shewn to me. I probed the wound—it was two and a half inches deep, extending obliquely down the inner wall of the chest; the pleura was somewhat injured; I was not then certain that the lung was injured; there was no escape of air or difficulty of breathing; a few days afterwards there was expectoration of blood, which, with other symptoms, convinced me that the lung had been injured; there was some inflammation, rendering active treatment necessary; the wound was a serious one, but yielded to treatment and the patient recovered in three or four weeks.

Here the evidence for the prosecution closed.

For the defence :

Louisa Dunton, sworn.—I saw Harriet Hooper that morning ; she had on a morning gown and her hair was very much dishevelled. I have known her five or six years ; she is of a very quiet, peaceable disposition ; I have never known her guilty of any violent, disorderly conduct ; her mother lives in Manchester.

(By a Juror.)—I believe she was raised in Richmond, and has been living here all her life.

The evidence closed.

The case was argued at considerable length, and with much animation by all the counsel.

Mr. Scott, in opening his argument, remarked that he had, during many years, been practising his profession, and had defended many criminals, but *never before*, had been called to defend a woman charged with felony !

Wednesday, April 30th, 1851.—The Jury came into Court with their verdict, finding the accused “Guilty” of unlawful, but not malicious stabbing, and ascertaining her term of confinement *in jail* at 3 months, 23 days, and her fine at one dollar.

The Court, in passing sentence, said, the Jury had dealt mercifully with the accused ; the blow was given under circumstances which excluded the idea that it was in self-defence ; the wound was dangerous and tended to death ; the prisoner ought to be grateful to a Divine Direction, that she was not now before the Court to answer the grave charge of Murder ; and he trusted the clemency of the Jury, and her escape from a worse fate, would induce her to restrain her passions, and in future pursue a more discreet course.

TRIAL OF SAMUEL HASTINGS.

HON. JOHN S. CASKIE, JUDGE.

In the Circuit Court of Law for Henrico Co. Criminal Term.

| | | |
|------------------|---|----------------------------|
| Commonwealth | } | Wednesday, April 30, 1851. |
| <i>vs.</i> | | |
| Samuel Hastings. | | |

For the prosecution, John B. Young.

For the defence, Robert G. Scott and W. Wallace Day.

The prosecution was for the alleged murder of Robert T. Childress, and was founded on Sec. 1, 2, 3, 4 and 5, chap. 191, Code of Va., page 723.

"I. Murder by poison, lying in wait, imprisonment, starving, or any wilful, deliberate and premeditated killing, or in the commission of, or attempt to commit arson, rape, robbery or burglary, is murder of the first degree. All other murder is murder of the second degree."

"II. Murder of the first degree shall be punished with death."

"III. Murder of the second degree, by a free person, shall be punished by confinement in the penitentiary not less than five, nor more than eighteen years."

"IV. Voluntary manslaughter, by a free person, shall be punished by confinement in the penitentiary not less than one, nor more than five years."

"V. Involuntary manslaughter, by a free person, shall be a misdemeanor."

The Indictment contained three counts, each for the alleged murder of Robert T. Childress, on the 30th September, 1850.

1. Charging the assault as made with a certain stick in the right hand held, and the blow as given on the head, of which the

stricken lingered till the 4th of November then ensuing, and died.

2. Charging the blow as given on the left side of the head with a wooden stick, in the right hand held, and concluding as before.

3. Charging the blows as given on the head, face and shoulders with a large stick, in the hand held, and concluding as before.

Under this indictment the accused might be found guilty either of murder in the first or of the second degree, or of voluntary, or involuntary manslaughter.—See Code of Va., page 777.

The accused had been bailed and appeared in discharge of his recognizance. He has for several years resided in Richmond, and kept a grocery store near Cary street. He seemed about 30 years old, had black hair and a dark complexion, with light eyes, a nose of aquiline form, and the under jaw slightly prominent.

He pleaded "Not Guilty" to the indictment.

The following were the Jury.

William D. Gibson, John L. Taylor, William Colgin, Thomas Leftwich, William G. Crenshaw, C. M. Pleasants, Massena Beazley, Valentine Winfree, John J. Morris, S. M. Zachrisson, Edwin Holderman, Jacob Woodson.

For the prosecution.

Mrs. Caroline Childress, sworn.—On Sunday night, about the last of September, Mr. Childress came home after I had gone to bed; I suppose he was intoxicated; he went to bed; he halloed three times in the night and I never heard any thing more of him during the night. The next morning he got up and called for his clothes, and after dressing himself, he went out; I walked out not long after, and as I went out, he came in at the gate; I was out a very little while when I heard a great lumbering sound, and presently a coloured woman called to me and said, "Miss Caroline, they are killing your husband;" I said, "what!" she said, "they are killing your husband;" I turned back, and when I got in sight, I never saw such a sight—Mr. Childress was all covered with blood! (here the witness seemed much affected; covered her face with her handkerchief and paused in her narrative); his clothes were as wet with blood as if they had been dipped in a tub, and Mr. Hastings was over him with a broken

stick in his hand ; the stick had a head as large as a small child's fist ; I saw Mr. Hastings slap his jaws twice ; Mr. Childress said, " Mr. Hastings, don't beat me any more ;" I went on up stairs and Mr. Childress came up ; I didn't think Mr. Hastings would follow him, but he followed him up stairs, and beat him over the head and back with the broken stick ; he beat him in the most cruel way ; no brute was ever so beaten. Wednesday night Mr. Childress was very sick ; he said to me, Caroline, I think my skull is broke, will you send for Doctor Bolton ; I said, yes ; I sent for Doct. Bolton ; when he came and examined him he asked who on earth had done this ; when told 'twas Mr. Hastings, he said he ought to have been arrested on the spot ; my little daughter cried and said, " Ma, Mr. Hastings has treated my pa so shamefully ; he beat him all the way up stairs."

By Young.—Our house was on 15th street, over Mr. Hastings' store, next to Mr. Branch's ; you go in from the back yard ; when I saw Mr. Childress, he was on the first pair of steps leading up from the yard ; I saw Hastings strike him and he followed him up the second flight of steps and beat him over the head ; Mr. Childress said, " Mr. Hastings don't beat me any more, you have beaten me enough ;" when Hastings struck him, his hat was off ; I don't think he went out Monday ; he went out a little while Tuesday ; he was sick all day Wednesday and Wednesday night ; Doct. Bolton came early Thursday. We staid in that house a week from the time Mr. Childress was beaten and then went to Union Hill to live ; Mr. Childress lived five weeks to a day ; during that time he sometimes went out, but generally staid at home.

Cross-examined by Day.—We had been living in that house near Cary street five years and two or three months ; we had been renting the house from Mr. Hastings during this time and he lived below us. Mr. Childress and I had been twenty years married ; at first Mr. Childress was sober and hard working, but afterwards he got to drinking ; I cannot tell how many years he was in the habit of drinking ; he troubled his own family when he was drunk, but there never was a better man when sober ; I never heard that he troubled any body out of doors.

Day.—Mrs. Childress, did you ever strike him ?

This question was objected to. After a brief argument,

The Court said that in a prosecution like this, it was competent to prove the deceased's general character, as whether turbulent or peaceable, and it was also competent, by fair cross-examination, to extract from the witness what might affect her credibility.

Witness.—I have struck him ; I have, in a passion, said I wished he was dead ; Mr. Childress went away once in a vessel ; I don't recollect, but I may have said that I wished the vessel would sink. I don't know that I ever said I wished he would go away and never come back. I have said a great many things I am now sorry for. Mr. Hastings and Mr. Childress had sometimes had altercations before this, but I was up stairs and did not hear much of it ; Mr. Childress got drunk very often. I had not been to sleep when he came home ; he halloed once in the night, and at that time he halloed three times ; I suppose Mr. Hastings heard it. The negro woman I have spoken of was standing in the yard ; when she spoke I was coming from round the rear of the house. I passed between Hastings and Mr. Childress ; I said not a word to Mr. Hastings, because I was afraid ; I said nothing, could not say any thing ; I gave no alarm and made no cry ; Mr. and Mrs. Dowd live near, very few steps off ; I gave no alarm because I was afraid ; I left the house because I did not like to stay there ; Mr. Hastings told me if I would leave Saturday, he would not charge for a month's rent, but I couldn't move Saturday, and so he charged a month's rent, which I paid, but I thought it hard in him. It was up the second flight of steps that Mr. Childress went, followed by Mr. Hastings ; Mr. Childress held on by the banisters ; I think there are two banisters.

Cross-examined by Scott.—Yes, I have been living there five years, but I can't tell certainly whether there are two bannisters, I think there are. Mr. Childress went out sometimes ; I don't think he went out the Thursday the Doctor came ; I can't tell you what days he went out ; he never worked ; he was not able to work after he was beaten. The day we moved, he brought down a few things out of the house ; he helped Mrs. Brown to bring down a cupboard and a bureau part of the way ; after we went to Union Hill, I do *not* think he ever went to the races ; I don't believe he could have gone with his head all bound up ; I heard him say he had been to the Court-House once ; we moved

on Monday ; he walked up to Union Hill, but he was not able. Yes ! Mr. Scott, I have known many persons do what they were not able to do, but they could not help themselves. I expect it is nearer from Union Hill to Fairfield race course, than to our former house. He went out sometimes, but he did not stay long ; I think he came to see the Mayor, to see what he could do with Mr. Hastings. I don't think Mr. Hastings' house *was* in a very populous part of the town, but all the ground about there is a good deal covered with houses. I *did* go to some of my neighbours and complain ; I never said either to Mrs. Dowd or Mrs. Brown, or any of my neighbours, that I did *not* see Mr. Hastings strike Mr. Childress ; I never *could* have said such a thing ; I went to Mr. August's office to inquire what could be done ; Mr. Watkins asked me if I could prove that Hastings struck Mr. Childress ; I told him I thought I could. When I returned, I called Mrs. Dowd up stairs, showed her Mr. Childress' head and asked her if she had seen Hastings strike him ; Mrs. Dowd said she had seen Mr. Hastings jerk Mr. Childress' feet from under him ; Mrs. Dowd was in the yard when I came in ; she had a bucket of water. I went to a lawyer to see what I could do with Mr. Hastings ; I did not want to sue him ; I wanted none of his money, but I wanted to punish him ; and I saw Mr. Young and did what he told me to do ; I came here to Court and went before the Grand Jury ; this was in October. I believe Mr. Childress had a looking-glass when he went up to Union Hill. The Doctor washed and dressed his head and put bandages upon it ; I don't know that he was in Mr. Blankenship's before we went to Union Hill ; I do not recollect much about his going out on Friday, or Saturday, or Sunday ; I can't tell what day he came to the Mayor's Court, but it must have been within two weeks after we went to Union Hill, because he never sat up at all for two weeks before he died. I could not say what days he went out, and what days he staid at home ; I wouldn't believe he went to the race course, he didn't often go to such places ; yes ! he got drunk, but he drank his own, he paid for all he drank. He once put his thigh out of place ; Doct. Dove attended him ; I don't know whether he was drunk or not when he did it ; he was sober when he was brought home. I don't think one of his legs was dropsical ; he was remarkably healthy ; had a good constitution ; when he had

a fit of drunkenness he was not attended by doctors. On Union Hill, Doctor Bolton attended him all the time; the dressing was kept on from the time the wound was first bandaged; he sometimes bought things for the family; he went sometimes to Mr. Larmand's and sometimes to his brother's house.

By Young.—It has been many, many years ago, I could hardly tell you how long since his hip was put out of joint; he has since walked somewhat lame and with a stick generally; the stick Mr. Hastings beat him with, was Mr. Childress' own stick; I don't know what became of it; I was told it was burnt; it was a good sized stick, with a knob about as big as a small child's (head?) As I came in Mr. Hastings slapped him, and then Mr. Childress said, "don't strike me any more; Mr. Childress said often he never would get over it; he said so from the first.

Mr. Young.—At this point I feel that it is proper that I shall make a statement to the Jury, and I will do so under oath if required by the counsel for the defence. Late in October, of last year, Mrs. Childress came to me, and with tears and weeping, such as she has exhibited to-day, stated the facts of the assault she has testified to; I sent her before the Grand Jury, who made a presentment of Samuel Hastings for the assault.

James Bolton, M. D., sworn.—On the first Thursday in October last, which was, I think, the 3rd day of the month, I was called to see Mr. Childress immediately after breakfast; I found him lying in bed; there was a wound on his scalp; I enquired how he received it, and his wife told me he had been beaten by Mr. Hastings; I expressed my surprise that something had not been done for the wound at the time; the hair was matted and bloody, and the blood had not been cleansed away from the region of the wound; I said also, that I was surprised nothing had been done with Mr. Hastings; Mrs. Childress said Mr. Childress had made a noise, I think she said, in his sleep. The cut did not penetrate the bone, or the pericranium of the bone; after so much neglect and delay, I did not expect the wound to heal immediately, and I therefore cleansed it; shaved off the hair around it and supported it by a bandage; I ascertained that he was a man of intemperate habits. It appeared to be a contused wound, as if made by a blunt weapon moving rapidly; he went to Union Hill about a week after the injury; he may perhaps have gone, influenced

partly by my advice, as I thought the purer air would benefit him; I attended him there every other day for some weeks; about three weeks after he moved, I was summoned hastily to see him, and on going in, I found him sitting in an easy chair—his face livid—his breathing laboured; he did not appear to be conscious; on being called to and told the doctor was come, he raised up and said, “is he?” or something of the kind, and after being thus roused, he relapsed into a state of coma. His pulse was feeble; his respiration difficult; the surface of his body cold; I was alarmed and sent for the leecher; I doubted the propriety of taking blood with the lancet, because of his very feeble state. I remained during the leeching and watched the effect; the leeches did not take hold readily until his skin was washed with warm water; much to my satisfaction, he improved under the leeching; the next day he was better, but unable to lie down, and when I asked if he would not like to lie down, he said he was afraid he would suffocate; he continued to improve for a day or two; at about the end of a week, he relapsed into a comatose state; two or three days before this, I had observed an œdematous swelling of one or both of his legs; what in popular language would be called a *dropsical swelling*. On Sunday morning, feeling uneasy, I called in Doctor Snead, and asked him to visit him with me, and we examined him together; we thought the brain affected; Doct. Snead called my attention to a peculiar sound of the heart; what we call “the bellows sound;” Doct. Parker also visited him with me; I requested him to do so because I knew he had been paying much attention to diseases of the heart; when Doct. Parker visited him with me, the “bellows sound” had become very feeble; it was hardly perceptible; on Sunday night or Monday morning, he died. Doctors Snead and Parker and myself, conducted a *post mortem* examination; the wound on the head had not healed at all; it had a glazed, unhealthy appearance; under the wound was a suppurating cavity which I had observed when he was alive; on cutting through the scalp the vessels of the scalp were found very much engorged with blood, so that blood poured out of them; on the outer surface of the skull there was a dark red spot under the wound, as though the bone were bruised; the pericranium (which is the outer membrane, immediately covering the skull) was diseased—al-

most disorganized—it peeled off under the finger; in the natural state, this membrane is very tough and adheres firmly to the skull; on the inner side of the skull, the vessels were deeply congested to an extent corresponding with the suppurating cavity on the upper side; the *dura mater* (the outer membrane of the brain) was fairly blue from the quantity of blood in it; the *arachnoid* was very full of fluid—there was a great deal of this fluid; we opened the brain and ventricles; the latter were very full of fluid; there were probably from four to six ounces in the ventricles and *arachnoid* together; the wound I have spoken of, was on the left side of the head; on the other side there was a bruise on the bone, somewhat similar, but the scalp was not cut; one of the eye lids was black and swollen, which was evidence of bruises about the face. We suspected some disease of the heart; the chest was opened; the lungs were pretty healthy; they had the natural *crepitus* under pressure; the interior of the heart was also perfectly healthy; there was no inflammation. Doct. Parker passed his finger into the *aorta*, and said, “I think I feel some spicula of bone;” I cut off a portion of the *aorta* and we found some minute spicula of bone, in the tube near to the part where the valves are fastened, but these “spicula” could not interfere with the motion of the valves.

By Young.—The cut on the head was an inch and a half in length; there is a very thick, tough membrane under the skin on the head, which it requires a severe blow to cut through. I saw him generally every other day, but when he was very ill, I saw him as much as three times a day; I dressed the wound first with dry lint and a bandage; I gave him no medicine then; I directed that his diet should be nourishing and his bowels be kept regular; from his previous condition and habits, I thought he could not bear either depletion or much stimulation. From the time I first found him in the comatose state I have mentioned, I did not think he would get well; two or three days after this, I observed this dropsical swelling of the legs; it is very common with persons of intemperate habits; there was considerable congestion on the inner side of the skull under the wound; yes sir, the outside blood vessels of every head, *do* communicate immediately with the inside vessels, through the *diploë*, the spongy portion of the skull; in the natural condition, the *arachnoid* pro-

duces just fluid enough to lubricate the parts, and prevent rough friction; the fluid may be seen glistening, but there is very little; the *pia mater* is between the arachnoid and the brain; I did not see any appearance of disease of the *pia mater*; the structure of the brain appeared perfectly healthy; I do not think five weeks long enough to have extended the disease much to the brain; several months might have done so; the inner ventricles of the brain were found congested. These spicula of bone in the heart are very common in the old; persons of fifty years of age very seldom fail to have such spicula within the heart, but these minute bony formations do not at all interfere with the circulation. The medical men, who examined the body, *unanimously* concluded that the patient's death was caused by the wound on the head. There was one other appearance in the patient, which I omitted; for several days before his death, his eyes were unnatural, there was pus or purulent matter formed in them.

Questioned by Dr. Merritt.—There was no separation of the dura mater from the skull.

By Dr. C. P. Johnson.—The whole dura mater was in a state of congestion; the middle meningeal artery gave no evidence of inflammation; the wound was over the left parietal bone, a little behind a line if drawn directly over from ear to ear. I cannot say what was the exact position of the head for an hour or two before death.

By Dr. L. W. Chamberlayne.—The pericranium had not come off before Doct. Snead removed a portion of it with his finger or thumb; there was no congestion of the lungs.

By Dr. Charles B. Gibson.—On the outer skull, the discoloured spot was caused by the vessels of the bone being full of blood; it could not be removed by wiping; on the inner table the discoloration was caused by engorgement of the vessels.

By Dr. Jas. H. Conway.—There was no effusion of pus or lymph on the dura mater; congestion there, was all I expected and all I found. The second sound of the heart was perfect.

Cross-examined by Day.—Mr. Childress was lying in bed when I first saw him, the 3rd of October; the wound had not been dressed by a medical man; I cannot say whether it had been dressed at all; it had a very neglected appearance; my direc-

tions in general were that he should keep quiet and free from irritation; should have light and nutritious diet, and that his bowels should be kept open and regular; I would *not* have approved of his using ardent spirit, or working or walking about the streets and city from one end to the other; I think a fall against some blunt object might have produced the same kind of wound as this; there was general improvement up to the time when he went to Union Hill; he complained once on *the Thursday*, when I was called so suddenly to see him, of shortness of breath, but it did not seem important; I consider that symptom as indicating the preliminary stage of the disease of the brain and lungs which I afterwards found; I applied topical treatment (leeches) to the region of the lungs, over the chest, under the collar bones; I should always apply topical treatment over the organ which was most affected; I was *then* doubtful which was primary, the affection of the brain or of the lungs; it was one or the other, and I thought a topical remedy applied to the lungs safe treatment; this was Thursday of the week before he died, about ten days before he died; by the treatment I have mentioned, both the lungs and the brain were relieved; he improved for several days. Two or three days before he died, I observed him getting much worse; he was weaker; stupor came on Sunday morning. I have an impression that the pericranium was not all removed. One of the properties of the arachnoid is to secrete fluid; if none were found there, I should conclude there was disease; it is now the best opinion among anatomists that the arachnoid does not connect with the ventricles of the brain; there are, however, different opinions on the subject. There was no blood in the serous fluid we found; it was excessive in quantity, so much so that in familiar terms, not strictly medical, I would call it a case of dropsy of the brain. The leg was puffy in feeling and appearance; my attention was called to it by Mrs. Childress, and I bandaged it. I should not be surprised to find symptoms of dropsy in the head of a drunkard, and it would be more apt to develope itself in a patient of debilitated constitution than in one in strong condition; dropsy would not be more apt to show itself in the brain than in other parts of the body; There was no appearance of concussion of the brain; I think if concussion of the brain had occurred at the time of the blow,

he would have fallen ; his symptoms were rather congestion and compression than inflammation.

Cross-examined by Scott.—I feel quite convinced—I have no doubt—painful as it is to say it—that the blows caused the death ; there may be room for doubt ; there is ground on which medical men may doubt, but I have no doubt myself. In treating the lungs, I intended to affect the congestion of the brain, which was a prominent symptom ; I believe the injury to the brain was the primary cause of the congestion of the lungs ; I am not certain but that even the dropsy of the leg might have been caused by the congestion of the brain ; any cause which impedes the general circulation, might produce a dropsical swelling any where in the body. I think both legs were somewhat dropsical, but I do not recollect distinctly except as to one. I don't think the *post mortem* examination was at all directed to the dropsy in the legs ; perhaps if we had so directed our attention, we might have ascertained whether it was of recent or ancient origin. The spicula of bone were just where the valves join the aorta. I should have considered it very imprudent in him to walk to the race-field, and to go into shops ; it would greatly increase his peril ; his getting drunk would certainly have added greatly to his peril.

By Day.—I do think, since the post mortem, and considering the nature of the wound, that such a wound would have placed even a healthy person in jeopardy. Yes, sir, there may be cases of *latent hydrocephalus* where there would be quite as much serious fluid in the head, as in this case.

THURSDAY, MAY 1ST, 1851.

Albert M. Sneed, M. D., sworn.—On Sunday morning, at the time referred to by Doct. Bolton, I met him and was requested by him to see one of his patients, whom he regarded as in great danger. I visited Mr. Childress, with Doct. Bolton. I endeavoured to converse with the patient, but it was impossible to get any intelligible answer out of him. Doct. Bolton mentioned that his affection was of the head and of the lungs ; I noticed that his eyes were bathed in *pus* ; after a time, I observed to Dr. Bolton that he had a very sick patient,—one who was going to die,

and to die "by way of the brain." I placed my ear to the region of the heart, and detected the "bellows' sound;" and we suspected that the lining membrane of the heart was inflamed. On Monday I saw him again; the "bellows sound" was still perceptible, but very much diminished. Doct. Bolton is mistaken as to the time of the death; it was Monday night, or Tuesday morning that he died. I attended and aided at the *post mortem* examination; the wound on the head was nearly circular in form, and there was an abscess beneath it; the pericranium was so much diseased, that when the scalp was removed, I easily removed with the bulb of my thumb, a part of the periosteum—proving that it was diseased and partially destroyed; the skull bone was discoloured; the *dura mater* congested and discoloured; we also found the *pia mater* considerably congested, though Doctor Bolton did not remember it. The *arachnoid* was very much distended with fluid; perhaps four ounces of fluid were there, but I cannot say certainly; on the other side of the head there was a bruised place, which was not important, unless the fact that a bruise remained five weeks, (supposing the blow inflicted when the other was,) proved that it was a violent blow. On examining the heart, we found no organic disease or derangement; 'twas just in the state in which we might expect to find the heart of any other person not dying of disease of the heart; there were a few little bony fragments near the valves, but not such as would interfere with circulation; such phenomena are very common in old persons. The inner surface of the skull was discoloured and ecchymosed almost coextensively with the outer abscess; Doct. Parker concurs with me in thinking that the *pia mater* (membrane immediately investing the brain) was congested. When I take the whole case; the history of it by Doct. Bolton, and what I saw in the patient during life, and in the subject after death, my mind is brought irresistibly to the conclusion (however painful it may be) that there was a direct, continuous and positive connection between the injury to the scalp and the death of the man.

Cross-examined by Day.—I did not observe the legs, but I observed that even the arms and other parts of the body were in an *œdematose* state, tending to a dropsical habit. I accounted for the "bellows murmur" of the heart, by supposing a very great paucity of blood, very poor in quality, and scanty in quantity,

and by supposing a diseased state of the lining membrane of the heart.

Day.—Doctor Snead, how do you trace the connexion which you suppose between this wound on the head and the death?

Witness.—When I find a patient who has received a heavy blow, whether inflicted by any one or no one, affected with coma and stupor—not to be roused—with eyes suffused with pus, and so, dying; when afterwards I find beneath the wound a suppurating abscess; the pericranium disorganized by disease; the skull bone bruised; the inner skull discoloured to the same extent; the vessels of the dura mater and pia mater greatly congested, and a quantity of fluid, greatly unnatural, in the arachnoid and ventricles; I *must* connect the state of the skull outside and inside, with the effusion on the brain which caused the death. We did not precisely ascertain the quantity of liquid; we had no means of ascertaining it; perhaps it would have been well that we should have done so, but I did not then consider it essential. I should think a blow of this kind would be apt to knock a man down, but it would not necessarily do so. There was no unnatural quantity of serum in the lungs. When I heard the “bellows murmur,” I did not consider it the most serious symptom, but as indicating a disease of the inner lining membrane of the heart, which ought to be treated; such a state of the heart is serious, but if treated promptly, not fatal.

Cross-examined by Scott.—Doct. Bolton did not tell me anything about bandaging his legs; I am certain the man died Monday night. The blood vessels of the pia mater were unnaturally full; the arachnoid in a drunken man, who has long been a drunkard, may and no doubt often does, exhibit such excessive effusion of fluid as was seen in this case; my own experience does not bring such cases to my memory, but I have read of such. If there were no manifestations of its presence during life, I should not expect, even in case of a drunkard, to find such an amount of fluid; this man did, during life, give manifestations that his brain was affected.

W. W. Parker, M. D., sworn.—I met Doct. Bolton, who informed me that he had a very interesting case of congestion of the lungs which had yielded very rapidly to treatment. Not long after, Doct. Bolton informed me that he had a patient (the same

he spoke of previously) who presented the "bellows murmur" of the heart; as I was then paying some attention to diseases of the chest, I went with him. With the stethoscope I could not perceive any such sound; the patient was comatose—insensible; there could be no doubt that his death was near, and we were not surprised to hear of it the next morning; I attended and aided the *post mortem* examination; my recollection is much the same as Dr. Bolton's; the wound was nearly circular—very unhealthy in appearance—as though it had had no tendency to heal; the bruised state of the outer skull was very perceptible and extensive. I did not observe as much *ecchymosis* inside, but I observed a quantity of blood effused from the inner table of the skull, which I frequently wiped away; the pia mater was very much congested; there was ten times as much fluid in the arachnoid as I ever saw in a head; the lungs were as healthy as any I ever examined; the heart was healthy; there were small bony structures in the heart; the smallest I have ever seen when I have found them at all in the heart.

Cross-examined by Scott.—Doct. Bolton said he was surprised at the rapidity with which the congestion of lungs had yielded; he mentioned the patient's intemperate habits. A long life of intemperance might certainly cause as much fluid on the brain, but not without manifestations of it before death, such as coma, stupor and insensibility. I have read of a case in which as much as eleven ounces of fluid were found in the head, but that man was long a valetudinarian. There were from four to six ounces in Mr. Childress' head. My attention was not called to his extremities.

A. T. B. Merritt, M. D., sworn.—I have heard the evidence in this case; my opinion is that the death was caused by the wound; the difficulty of breathing, in my opinion, arose from the pressure on the brain; I do not think there was at any time congestion of the lungs, because in that low state of health the lungs, if congested, would not have relieved themselves; the œdematous state of the legs and other parts of the body, is a state very often found in cases of low health and advanced stages of disease; in such cases the processes of secretion and absorption are very irregular and thus this condition of body may be caused.

Cross-examined.—I do not think the fact that the leeches would

not take hold at first, indicated the state of surface caused by congestion of the lungs; often they will not take hold when the skin is not clean, and it requires to be washed. Leeching the chest might have and probably would have relieved the head; my practice, during twenty-five years, has been principally in the country, where we do not leech much, but I have cupped the chest for affections of the head; I might in such cases bleed from the arm.

(Here Doct. Merritt's testimony was interrupted, and when the trial was resumed, he was not again called. To save the time of the medical witnesses, all their testimony on both sides was heard together.)

For the defence :

John Dove, M. D., sworn.—I knew Robert Childress for twenty-five or thirty years; he was a man of very intemperate habits; he broke his thigh in a drunken frolic in 1838, and I set it; I had great trouble—much more than usual—in treating it, and when it healed, the limb was shortened so much as to render a stick necessary in walking. I have heard the evidence of Doct. Bolton, Doct. Snead and Doct. Parker, concerning the wounds said to have been inflicted on his head by the prisoner, and I have examined and weighed it for myself, together with their opinion as to the probability that his death was caused by the wound on the left parietal bone. Knowing as I do, that there were causes and agents growing out of his habits which were likely at any moment to produce the death of which he died, as evinced by the autopsy, and there being several symptoms absent which are necessary to prove satisfactorily the effects of such a wound when fatal, I am of opinion there is great room for doubt that the wound had any thing to do in producing his death.

Robert G. Cabell, M. D., sworn.—I have heard the evidence of Doct. Bolton relating to the symptoms attending the illness, and to the post mortem examination of Childress. The circumstances were such as to make it impossible for me as a medical man, to say whether violence or natural causes produced his death. Childress was a man somewhat advanced in life, with a constitution infirm and shattered by a long course of intemperate habits, and he had undergone exposure, after the reception of the injury of which he is presumed to have died. There was in his case a

tendency to dropsy, as manifested by the œdema of his legs, and it was also in proof, that his hands and arms were affected in the same manner. Now, œdema of the lower extremities often results from debility, and may be local in its character, being produced by the pressure of the superincumbent column of blood; but when dropsical effusions occur in the upper extremities, it indicates according to my observation, a decided and fixed dropsy affecting the whole constitution and is, in most cases, a fatal disease. In this case the dropsy existing in his legs and arms, might have extended to the brain and produced the effusion of serum which was found under the tunics and in the ventricles of the brain, giving rise to stupor and the other fatal symptoms detailed. In my opinion, the exhausted vital powers and dropsical state of the patient, while they might have aggravated the wound and prevented it from healing, were causes sufficient to produce death, even if no wound had been inflicted on the head. It is, therefore, impossible for my mind to be brought to the conclusion that the wound on the head and the inflammation resulting from it, necessarily produced death, or that it had any decided agency in causing the death of the patient. I cannot say that the wound did not cause death, it was possible for it to have done so, and the constitutional irritation of so large an abscess on the head, might have had an injurious effect, but I am impressed with the belief, that no decided opinion can be formed in the case, and that there must necessarily be a strong and an abiding doubt in relation to the matter. It is true that wounds of the head are generally regarded by the best medical authority as dangerous, although in my own practice, I have often seen wounds extending to the bones of the cranium and apparently of a formidable nature, pass off without the least danger to the patient's life.

James H. Conway, M. D., sworn.—I cannot say that Robert Childress died in consequence of the wound upon the scalp, because, as exhibited by post mortem examination, there was a want of correspondence between the condition of the pericranium and the dura mater. Had the disease extended from without inwards, instead of finding the dura mater adherent to the inner table of the cranium with its veins *universally* congested, I should have expected to have found it separated and most proba-

bly covered with pus or lymph, or at least to have found the greatest intensity of congestion at that point opposite the wound and radiating thence to the other portions of the membrane. I believe that the congestion of the dura mater was purely passive, and that it, together with the effusion of serum into the ventricles, beneath the arachnoid and into the cellular tissue of the extremities, resulted from the same cause, namely—great general debility and a depressed condition of the constitution—the consequences of excessive intemperance. I think that the bruised appearance of the bone was probably the result of the blow. I do not believe that congestion of the lungs ever existed, nor do I believe that the very slight bony deposit about the valves of the aorta, had any agency in the termination of the case, inasmuch as the second sound of the heart was perfect. I do not mean to exclude the wound from the list of causes of disease in the patient, but I am inclined to the opinion that death was probably the result of his previous intemperate habits. I consider the danger of wounds of the scalp very much exaggerated, having never seen one terminate unfavorably.

L. W. Chamberlayne, M. D., sworn.—I think it certain that the blow was not the immediate cause of the death of Mr. Childress, that it may have indirectly aided in producing the death, I think probable. According to my experience in practice, a blow on the head, if fatal, will always cause death in less than five weeks; some perceptible effect on the brain will be observed in about fourteen hours after the blow. The medical witnesses who saw him, have testified to a dropsical state of the system, and this might react upon the brain; the extreme debility of the patient is farther proved and his debilitated state would very much tend to produce the symptoms found here. I think it extremely improbable that the blow was the immediate cause of the congestion found within the head. We know that in many cases a large quantity of fluid is, *by slow degrees*, poured out upon the brain, but from its gradual character, it has not destroyed life, while a small quantity, suddenly poured out, will produce death.

Cross-examined by Young.—There may have been an indirect connexion between the blow and the death; here is a man of intemperate habits, who receives a blow which was neglected for two or three days,—this, with his habits, might have produced a

state of debility which might have ended in congestion and effusion. By *direct cause*, I mean when a blow immediately produces a congestion of the blood vessels under it, the other vessels remaining unchanged.

Carter P. Johnson, M. D., sworn.—From the statements of Doctors Bolton, Snead and Parker, which I have heard, I consider it a matter of such extreme doubt whether the blow caused the death, that I could not hazard a positive opinion. There are too many links that seem to me to be wanting in the chain of connexion; I suppose there is no doubt that the effusion on the brain caused the death, but what caused that effusion? In general, in order that a man shall die from a blow on the head, the blow must result in one of two things—concussion or active inflammation—neither of these seems to have existed here. The separation of the pericranium from the skull does not, in my opinion, necessarily prove disease throughout it; the suppurating cavity might produce partial separation. There is proof of a congested state in the inner table, but I have frequently seen, in dissecting healthy skulls, considerable congestion and flow of blood within. At the place of the wound, the skull was not cut through by the gentlemen who dissected; and, thus, there is wanting the best proof that the external injury was transmitted through the skull bone. There is proof that the congestion of the dura mater was general and not merely at the place of the wound; this state may have been produced by the position of the head just before death; it may have been depressed so that the blood would flow down into it. These considerations, taken with the fact that the man was of very intemperate habits, throw so much doubt upon the question, that I cannot express a positive opinion.

Cross-examined.—It is matter of inference that the congestion inside resulted from the blow, but the proof would not be complete without cutting through the skull there. The wound may have had some influence in producing the death, but it is so doubtful that I cannot hazard an opinion upon it.

Re-examined.—From my own personal experience and practice in dissections, I cannot say that it is usual to find so much fluid in the head of a drunkard, but such cases are stated in medical works.

By Young.—I think when all the appearances and facts can be minutely known, the opinion of another physician is entitled to more weight than that of a physician who has attended the patient and afterwards made a post mortem examination. The attending physician is very apt to form an opinion or theory as to the case before death, to which the appearances after death insensibly adapt themselves.

E. G. Clay, M. D., sworn.—I think it exceedingly doubtful whether the blow was the direct cause of the death. Taking into consideration his intemperate habits and his reduced state of health, I think there were sufficient causes, without the blow, to account for death; the fact that the wound did not heal, seems to show the low state of his general system; according to my experience, wounds are more apt to produce debility in intemperate men than in healthy persons of sober habits.

Cross-examined.—I did not say that the wound would be apt to produce death in an intemperate man, but that it would tend to increase a previous state of debility; I have never seen death result from a mere injury to the scalp.

F. W. Hancock, M. D., sworn.—My mind is in extreme doubt about the case. I think his broken down, decayed constitution, his intemperate habits, and dropsical tendency, sufficient to account for the effusion on the brain, without the blow.

Cross-examined.—It may have indirectly accelerated death, by causing a suppurating surface which tended to increase debility.

F. W. Roddey, M. D., sworn.—Upon the facts detailed by Doctors Bolton, Snead and Parker, I cannot deduce the death from the blow. If the blow caused it, there would have been concussion or inflammatory action, neither of which existed. There was no internal inflammation, and all the appearances within the head might have existed without any connexion with the blow; neither is there evidence that by "metastasis," inflammation from without was transferred to vital organs within, thus causing death; his habits and previous health may have produced the congestion and the effusion upon the brain which seems to have been the immediate cause of the death.

Cross-examined.—I think that a blow received by a man like Childress, might operate by suppuration to increase debility and by accelerating the formation of Serum, might accelerate death.

(Doctors C. B. Gibson and Samuel Patteson, were also examined for the defence. I did not hear their testimony, but am informed by the counsel for the defence and the prosecution, that they both expressed great doubt whether the blow was the cause of the death. The testimony of Doctors Dove, Cabell and Conway, was kindly furnished to me in writing, by those gentlemen respectively, upon my request that they would write out their evidence as delivered in Court. The other medical testimony was noted at the time it was given. R. R. H.)

Doct. Bolton recalled by Young.—I abstained from giving the reasons of my opinion in my previous evidence. After the *post mortem* examination, we all retired without a statement of the opinions of either of us. On coming together again, we gave our opinions, and found that we had come to the same conclusion. We had not learned that his habits were intemperate from the time of the blow to the death; the wound got no better; under it was a suppurating cavity; under that a dark spot on the bone; inside these was great congestion in a circle so nearly defined that you could almost run a pen around it; next, there was congestion of the pia mater, and a large effusion on the brain; there was no evidence either during life, or derived from the *post mortem* appearances, that this effusion had existed any considerable time. There was no high inflammation, he was too much reduced for that; there was enough to show in my mind a connexion of congestion from the blow. In my opinion there was no necessity for a separation of the dura mater from the skull, congestion would be all I should expect. I think the congestion of the lungs was owing to pressure of fluid and disease of the arachnoid at the place where the eighth pair of nerves of the lungs are attached to the *medulla oblongata*; then this congestion increased that of the brain by sending to it unhealthy blood; they therefore acted and reacted upon each other.

Doct. Gibson, recalled by Scott.—My opinion of the case is not altered by Doct. Bolton's statement; I do not understand that he states any new symptom or appearance observed by him before or after death.

Doct. Dove, recalled by Scott.—My opinion of the case remains unchanged.

Doct. C. P. Johnson, recalled by Scott.—My opinion is not changed.

(Questioned by the Court.)—I am inclined to think that the condition of the lungs and heart throws no light upon the cause of death in this case; I think the lungs had no organic disease; their *function* only was affected by the state of the brain. I may illustrate by saying, the main spring of a watch moves all the wheels; if the main spring be broken the wheels will stop, but they are not therefore necessarily injured, or, in themselves, unsound.

Here the medical testimony closed, and the evidence for the prosecution was resumed.

Samuel Pearce, sworn.—I lived near Childress on Union Hill; I saw him the day before the night he died; his head was bound up; I did not take off the bandage; I saw wounds and bruises on his shoulders and other parts of his body; his legs were swollen; I was sent for to aid in washing him; he died that night.

Cross-examined.—I had seen him walking out on 18th street, and again on another occasion, going up the hill home, some week or two before his death. He died in the neighbourhood of Mr. Strecker's, on the same square. I saw him near Kinnard's; he was walking with his stick in his hand and his head bound up.

Richardson O. Gary, sworn.—I heard of the "fray," and was in Hastings' store the day it happened; he said they had had a fray; I understood, from what he said, that he had beat him, and he said he was going to get rid of him, and if they didn't go away, he would lay him up, or something like that. Mr. Hastings said he and Bob had had another fray and that Mrs. Childress would have to move. I went for Dr. Bolton.

Cross-examined.—I am pretty sure Mr. Hastings said he had beat him; he said he had seen him in the alley and asked him about some fuss Childress had been making, and that Childress said he didn't halloo and commenced—(stopped.) I saw Childress out two or three times after this—once on Cary street—once on Franklin; he was walking with a stick; on Franklin street I saw him this side of the Market; this was after he moved to Union Hill; he said he was "right poorly;" I saw him on 14th street, before he moved; I think this was before I went for

Dr. Bolton. Mr. Childress was a very drinking man; had many sprees.

Edwin Dews, sworn.—I saw Mr. Childress two weeks before he died; he was sick in bed complaining very much; at first he appeared to be in a stupor, but when roused he said he wanted me to take a memorandum of work done by him at Duesberry's to collect it; he said he thought he should not get well; I asked him what was the matter; he said he had received a very severe beating—

Here the counsel for the prisoner objected to the introduction of Childress' declarations.

Day.—No proper foundation has been laid for them; such declarations can only be received when the declarant is near death; is *in extremis*. I cite Hunter Hill's case as giving the Court the whole law on the subject.

Young.—The party need not be *in extremis*; often such a rule would defeat the object of the law; it is sufficient if the party has no hope of recovery and makes the statement in view of death.—Roscoe's Crim. Ev. dying dec. 33.

Scott.—Our Courts have always required that death shall be actually impending, at least, in the opinion of the declarant:—the expression "in articulo mortis," has been used as the rule.—III Rob. Prac. 279. Roscoe 31. Marg. 32. Beck's Med. Jur. 926. Hunter Hill. II Grattan 607.

The Court.—The rule is clear; its application may be difficult.

(*Mr. Dews, questioned.*)—Childress stated to me that he was very ill, he did not think he ever should get well; he appeared very pale and emaciated; his head was tied up.

The Court.—The true rule is, that the party must be altogether without hope of recovery; he must feel that he has done with earth—its passions and motives. It is not clear to me that Childress was bereft of all hope of recovery, and at present I shall not permit his declaration to go to the Jury, but the application may be renewed by the Commonwealth's Attorney, if a proper basis be laid.

James Prosser, sworn.—I saw Childress the Thursday week before he died; I found him sitting in a rocking chair, labouring with shortness of breath, and twisting and winding in the chair; his eyes were set back in his head. I asked him if he knew me,

he said yes, and called me by name. He asked if I ever saw any body in his situation ; I said, "no ! but don't be alarmed, we will send for the Doctor." We sent for Doct. Bolton. It was two or three days before Childress could lie down ; I sat up with him every other night. One night he came to himself and we talked : he said he didn't think he should ever get well ; I continued to wait on him till he died.

By the Court.—At the time we talked, he seemed perfectly calm ; he talked some time as I sat on his bed side ; he said he wouldn't get well two or three times.

Judge Caskie.—I will take time, until to-morrow, to consider whether a sufficient foundation has been laid to admit the declarations of Childress. In the mean time, the case can go on.

Prosser, continued.—I shrouded him after his death ; there were many bruises on his shoulders and back ; there was one bad bruise as if his back was mashed in.

Scott.—Did you see him walking about ?

Witness.—Yes !

Scott.—*With his back mashed in ?*

Witness.—'Twasn't his back, 'twas at his side.

Scott.—Stand aside !

Here the Commonwealth's Attorney announced his case closed for the present.

For the defence :

Mrs. Catharine Dowd, sworn.—On the morning of the difficulty, as I was going after a bucket of water, Mr. Childress came in the yard and was cursing some one—calling him "Damned son of a bitch," "damned rascal," and such names. I got my bucket and whilst at the hydrant, Mrs. Childress came by and I spoke to her. As I came back, the door leading into the house was open, and I saw in the house Childress and Hastings in contact ; Childress had Mr. Hastings by the collar, and Hastings appeared to be pulling away from him ; I think the scuffling closed the door. Mrs. Childress passed in at the door. I saw Mr. Childress that day at the window of his house ; two or three days afterwards, Mrs. Childress sent for me two or three times ; my husband wouldn't let me go ; when he left the house I went to Mrs. Childress' and she asked me if I saw Hastings strike Mr. Childress ; I said no ! just as I said so, Mr. Childress came from

the next room and said, "Caroline, you saw it, that is enough." She said, "no, I was back." "Back where?" said he. "Back in the yard," said Mrs. Childress. I had no conversation with Mrs. Childress before she sent for me; we use the same hydrant.

Cross-examined.—Mr. Childress was coming into the yard, cursing and swearing; I was going towards the hydrant, which is at the front corner of my house; he went on to the house; Mr. Hastings has a front way to come into his rooms; I drew a bucket of water and returned, and when I was at the foot of my steps, I saw Childress and Hastings. Mr. Childress then had hold of Mr. Hastings' collar, and Hastings seemed trying to get from him; they were then down upon the steps, lying side by side, scuffling; I saw no stick; Mr. Childress had what I call "a good hold" on Mr. Hastings; I saw no more, for I went into my own house. Mrs. Childress came from the rear of my house; I observed her going through the yard, but I did not see her when she went into her house; I saw a negro woman in the yard. If there had been much noise in the next house, I think I could have heard it. I could have heard a heavy boot or shoe. Three or four days afterwards, when Mrs. Childress sent for me, my husband didn't want me to go, but I went, she asked, "Mrs. Dowd, did you see Sam Hastings strike Robert?" He came out of the back room; the door was open; he said, "if she didn't see it, Caroline, you did," but she said she didn't see it, she was out back of the yard. It has been my grief and sorrow that I did not go on and so not see what I did see. Yes, sir, my husband was in jail a short time after this; he got into a little drunken frolic, and we had a little "fray," and I had him put in jail. Mr. Hastings, I think, was in jail about the same time.

Re-examined.—I have lived in Lynchburg, in Buchanan, and at Rocky Point; I am not a tenant of Mr. Hastings'.

Rev. Daniel Downey, sworn.—I have been acquainted with Mrs. Dowd since 1842; I know a relation of hers in Amherst county. Mrs. Dowd's character for honesty and veracity was always good; I would not hesitate to believe her on oath. She always stood well in Lynchburg, Fincastle and Buchanan.

Cross-examined.—I was Catholic pastor in that region from 1842, to 1845. I married her to Mr. Dowd in 1842, in Amherst; they then came to Lynchburg; I went to Staunton and was pas-

tor of that mission and of the mission extending to Fincastle and Buchanan. I have heard sometimes that Mr. Dowd was not so sober as he might be, but that Mrs. Dowd was a truly valuable, good woman; I never heard his veracity called in question.

James Dowd, sworn.—I was living in a house belonging to Mr. Hastings; I knew Robert Childress; after the affray, I saw him once before he moved; I heard Childress cursing and swearing; I thought he must be drunk; (as I am sometimes;) I heard him call somebody a “damned Irish son of a bitch;” afterwards I saw him and Hastings together; they had a scuffle; I saw no blows and no stick. I saw Mrs. Childress go in, but I could not see her as she went in the house. She sent for Mrs. Dowd; when the girl came, I said, “if Mrs. Childress has more business with you than you with her, she can come and see you.” I then went down street. I saw Mr. Childress the day they moved; he was helping to move; I saw him helping to bring a bureau down, he and a negro man brought it down; I went and helped to put it in the wagon, remarking that I was a little stronger than he was. I do not think I noticed that his head was tied up; he helped to move the Monday after the affray; I did not hear him complain of suffering; I saw him once afterwards on Cary street, between 13th and 14th streets.

Cross-examined.—I was standing at the window; I was drawn to the window by the sound of the cursing; I saw my wife in the yard; I saw no blows passed; they were inside the door and seemed to be scuffling and to have hold of each other; the door closed and I did not see any thing more; when Mrs. Childress came, she opened the door, but sideways, and I could not see any thing; all I heard said was Hastings, I think say, “Bob! go up to your room.” I helped Mr. Childress with the bureau, because I thought I was the strongest; some days I work and some days I don’t, I work when I feel like it.

By a Juror.—The door is not on a level with the yard; a small flight of steps leads up outside from the yard; then comes the door, then there is a little landing and another flight of steps inside. Mr. Hastings can come out of his rooms, on the landing inside the door; the space is narrow where they met, not more than three or four feet wide.

Mrs. Susan Brown, sworn.—I was not at Mrs. Childress’ till

the Monday after the affair; she had been over to ask me to take the rooms off her hands, and I went over to see her about that and to ask about what she had said about me. When I saw her, she was crying mightily, she had a cupboard at the top of the stairs; she asked me to take the rooms; she said she *knew* I wanted them; I told her I didn't know about it; I helped her some; she said she had seen "a scrummage" between Mr. Hastings and Mr. Childress, and that she saw blood on Mr. Childress, but she did not say she saw Mr. Hastings strike him. I saw Mr. Childress move a barrel and when he went away he carried a looking-glass.

Cross-examined.—I live just across the street. I don't think I ought to state here, before all these gentlemen, what I heard she had said about me. (*Pressed*)—I heard she had said that if Mr. Hastings wanted the rooms *for himself and me*, he could get them without beating Bob to death.

By Scott.—The persons who informed me, were Mrs. Dowd and Mrs. Hastings, (mother of the accused.) Mrs. Childress said *she knew* I would rent the rooms as soon as she moved out.

Mrs. Owens, sworn.—I saw Mr. Childress a short time before they moved; he was across the street with a stick; I have heard his wife say, that if she were in Mr. Hastings' place, she wouldn't stand Bob; she would pitch him down the steps.

Miss Via, sworn.—I live at Mr. W. C. Drew's. Last fall I saw Mr. Childress; he came from Mayo's bridge; he appeared very drunk; he sat down on Mr. Drew's cellar; his hat fell off, and he fell after it, head foremost, down the cellar; when I saw him he was lying with his feet on the steps and his head down on the floor. I think this was about four or five weeks before I was examined in the Mayor's Court, (which was in November.)

Cross-examined.—'Twas about three or four weeks before I heard of the death of Mr. Childress. I am not acquainted with Mr. Hastings, and knew very little of Mr. Childress. It was a double cellar door, opening in the middle; it was open. He caught at his hat and fell backwards; I peeped down and saw him as I have said; I was scared; I said, "Oh! my Lord!" Some one said, "what's the matter." I said, "a drunken man has fallen down the cellar and, I expect, killed himself; its Mr. Childress." I don't know who spoke to me; I had Mr. Drew's baby in my

arms ; there were a good many people, white and black, in the store ; I don't know how it turned out. I had seen Mr. Childress perhaps four or five or six times, but I never had spoken to him. As I turned to go in, says some one, " who is it ; " I said, " 'tis Bob Childress." I first heard at Mrs. Blankenship's that Mr. Hastings had beaten Mr. Childress.

Mrs. N. M. W. Smoot, sworn.—I saw Mr. Childress on the 15th of October, walking on 18th street ; Mrs. Ambrose was with me.

Mrs. Sarah Ambrose, sworn.—I saw Mr. Childress on the 15th of October, as Mrs. Smoot has stated.

W. C. Drew, sworn.—There is a cellar under my store, 9 feet deep when the door is erect. I saw Mr. Childress at the Hustings Court the 9th of October. He was walking among the crowd, he looked pale ; I had business there.

(By a Juror.)—Miss Via did not mention Mr. Childress' falling into the cellar to me ; I think I was at Chesterfield Court, I don't recollect the date ; I did not hear of the falling into the cellar, until this affair between Hastings and Childress began to be talked about.

George Little, sworn.—I saw Mr. Childress on the 7th of October, he was moving some furniture down from his house ; he was carrying down cooking utensils, I think ; I had seen him the Wednesday before walking across the street. I am not positive as to this last time, but 'twas two or three days before the 7th ; I recollect the 7th, because Mr. Hastings went to Powhatan Court ; I had some transactions with him on the 7th, and he left a receipt written for Mrs. Childress, for me to give to her ; I think she paid me \$2, which was for part of a month.

T. P. August, sworn.—I cannot say that I knew Robert Childress ; I only remember to have seen him once, and then I only knew it was he from what he himself said ; on that occasion I do not remember that he called his name, or that I asked it.

Cross-examined.—As to the man who was in my office, if fifteen minutes afterwards any one had asked his name, I could not have told it.

William D. Fuqua, sworn.—I knew Mr. Childress ; I saw him at Mr. Blankenship's a short time after this circumstance happened ; I saw the wound ; it looked very dry ; it had a little ban-

dage, but no lint; I don't think I saw him afterwards. At Mr. Blankenship's I think I saw Childress take a drink; he asked for it; Mr. Blankenship gave it to him; he took the bandage off his head and shewed us the wound. The platform inside the first door where Mr. Childress lived, is very small; the steps leading up stairs, occupy the whole width of the platform; two doors open on it, one from without and one from Mr. Hastings' room.

Cross-examined.—It was directly after the affair that I saw him; his appearance was pretty much as usual, except that there was a bruise on his eye and this cut on his head.

Cornelius Cormell, sworn.—I knew Bob Childress; he was an old acquaintance of mine. On the 10th of October, I was coming from Fairfield race course, I met him going towards the course, he was then about 300 yards from it. The main race was that day; a crowd of people was still there; he was walking directly towards the course.

Cross-examined.—His face was "sort of black;" I didn't see any thing on his head. He did not complain of any pain in the head; I did not think he was going to die—a man who looked as likely as he did!

Robert Childress, sworn.—He was my uncle; I saw him about two weeks before his death; he was at my father's; he took some cider; I think I saw him twice—two days in succession—he only drank once, that was the last time; my father resides about a quarter of a mile from the place where my uncle lived; 'twas about 12 o'clock when I found him there.

Cross-examined.—He took one glass of cider; I saw him drink nothing else.

William Larmand, sworn.—I knew Childress; about two weeks before his death I saw him at my grocery, about 200 yards from where he lived; he came twice in one week; this was during the races. He came and bought some mackerel; I never saw him afterwards, until I was called to help to put him on the bed Monday evening; he died Monday night.

Cross-examined.—I did not notice any bruises whatever; I did not notice the bandage; it might or might not have been there; I observed his eyes were swollen; I don't much like to handle such people and didn't examine him particularly.

James W. Gaines, sworn.—I saw Robert Childress after he mo-

ved on Union Hill. I was reading, I heard some one talking to my wife, I looked out of the front window and 'twas Mr. Childress. I think it was Sunday, because 'twas very seldom I staid at home except Sunday, and hardly then. I lived, at that time, over Peake, Bradley & Co.'s, on Main street; Mr. Childress was on the pavement; I remarked he had his head tied up, but I didn't then know he had been hurt.

Jesse Franklin, sworn. (Day.)—I saw Bob Childress *Sunday*, but what day or month I don't know; I don't know where he was living; I don't even know that I can say what year it was; I wont say particularly it *was* last year; I live just out of the city and work in the city; I never paid any attention to it.

(By Scott.)—I never visited old Bob Childress; I don't know where he died; I didn't go to his funeral; I've done.

Scott.—And I've done with you.

James Allen, sworn.—About the time this affair happened, a man who was represented to be Mr. Childress—

(Young objected that the witness did not know him to be Childress.

The Court said if Mr. Allen had learned from general report that this was Childress, he might go on.)

—Was lying on the corner, near our warehouse. I called officer T. B. White, who came and lifted him up and told him to go home; he could not stand, he was so drunk; Mr. White called a wagon and carried him to the watch-house; this was, I think a short time before this affair.

For the defence:

Doct. Bolton, recalled.—After the first time I saw him, I do not think I had any conversation with him as to the person who had inflicted these injuries; I did take his wife aside on the *Thursday* he was so ill, and tell her I thought he would die; I thought it not prudent to communicate this to himself; I do not recollect the least remark *from him* as to whether he would die or recover; he appeared in low spirits; not disposed to converse. He had been a stranger to me before his injury; I think I always found him at home when I called; I generally called in the morning.

For the prosecution, rebutting testimony was offered.

Mrs. Blankenship, sworn.—The day Miss Via was at my house she said she did not know Mr. Childress, and didn't know that

she had ever seen him; it was after this affair; she said not a word about his falling into Mr. Drew's cellar. I recollect, in the latter part of April or first of May, Mr. Childress fell into Mr. Drew's cellar; I was near the door and saw him come out of the cellar. My sister and mother were present when Miss Via was at my house.

Cross-examined.—After he came out of the cellar, I did not see that he was hurt; he picked up his hat and went round Mr. Drew's corner; Mrs. Childress is my aunt; he drank a great deal more than he ought to have done; I expect he was disagreeable to his family. I saw him after he was hurt, he was in our store; he asked for a drink and I gave him one.

Mrs. Pointer, sworn.—I waited on Mr. Childress during his last illness; I cannot tell exactly when I went there. He told me several times he knew he should die,—he knew he could not live under his sufferings.

(By the Court.)—I was sent for *the Thursday* Doct. Bolton was called in. He made these statements several times.

For the defence:

F. A. Blankenship, sworn.—Robert Childress was a very intemperate man; pretty generally so; when drunk he was remarkably quarrelsome, I have been obliged to chastise him myself, I could not stand him; his habits brought on fits about eight years ago; I have stood over him and seen him have half a dozen fits in succession.

Cross-examined.—I don't know that he has had any fits in less than eight years. When perfectly sober, he was one among the most peaceable men I knew. I don't say he got drunk every day, but I have oftener seen him drunk than sober.

(By a Juror.)—He was a hatter by trade; an industrious working man when sober.

FRIDAY, MAY 2ND, 1851.

Judge Caskie.—I have reflected upon the propriety of admitting to the Jury the declarations of Childress. Evidence has been given that after Thursday, when Doct. Bolton was suddenly called, he *repeatedly* declared his belief that he would die. He seems to me to have had no hope of life. I think a sufficient foundation has been laid.

James Prosser, recalled.—After he said to me he was convinced he would not recover, I think he said, Mr. Hastings had beaten him on the head.

Mrs. Pointer, recalled.—After the Thursday, Mr. Childress said to me, that he was convinced he would not recover; that Mr. Hastings had beaten him over the head so, that he could not recover.

Byrd Page, sworn.—I knew Childress; he was lame; had had his thigh broken; he was a man about my size; I should not suppose him a man of strength; he was given to drink, but when sober, very quiet. I have known Mrs. Childress some 17 or 18 years; she is a very industrious lady; I never heard her speak against him.

Cross-examined.—Childress was often in the hands of the police; generally, when I saw him, he was too drunk to make much noise.

James H. Poindexter, sworn.—I know Mrs. Caroline Childress; she has worked for our firm ten or twelve years; as far as I know her character, 'tis good; I never heard it called in question; I never had occasion to question her veracity; I would believe her on oath.

Samuel Pearce, recalled.—I am well acquainted with Mrs. Childress; have known her almost as long as I have known myself; her character is very good: I would believe her on oath.

R. D. Mitchell, sworn.—I have known Mrs. Childress for fourteen years; her character is good; I would believe her on oath as soon as I would believe any body.

The evidence closed, and at about 10 minutes past 11, A. M., the argument before the Jury commenced.

Young.—Cited McWhirt & Ferguson's case, III Grattan 654. Hunter Hill, II Grattan. In Virginia, when a homicide is committed, the law presumes it to be murder in the *second* degree, and it is for the Commonwealth, by evidence, to elevate it into murder of the first degree, or for the accused, by evidence, to lower it to manslaughter, voluntary or involuntary, or to shew it to have been excusable or justifiable homicide.—Roscoe's Crim. Ev. 702-706. You must believe that the blow was the cause of the death, but if it *accelerated* it or produced it *only* because of the debilitated condition and habits of the deceased, still it will

be murder or manslaughter.—Guy's Forensic Medicine 469.

Day spoke from about half past 12 to 7 o'clock in the evening, with an intermission of an hour. He argued very fully every point that could arise upon the law or the evidence. He cited Guy's Foren. Medicine 461. Taylor's Med. Jurisp. 302, 306, 413, 408, 409. Beck's Med. Jurisp., Last Edit. 302, 371, 315. Kennaway's case in Beek 302, was much relied upon. In this case, a woman intoxicated and violent, died after receiving from her husband, (an industrious man, returning home from his work,) two blows that did not seem calculated to produce death. On *post mortem* examination, an artery in her head was found ruptured. Sir Charles Bell "being asked whether the blows were the cause of the rupture, said he conceived it very likely that a shock would rupture the vessel, and being then asked, whether he conceived that this woman was more likely to have a vessel ruptured from having been intoxicated, he was of opinion that intoxication and the struggle, were likely to produce such a degree of activity of the circulation in the head, that a less violent blow might produce rupture, than what in other circumstances might have proved fatal."—Kennaway was acquitted.

SATURDAY, MAY 3RD, 1851.

Scott, for the defence, spoke from 9 'till half past 12 o'clock.

Young closed at 2, P. M. The Jury retired, and in about half an hour, returned with a verdict of "Not Guilty."

The accused was discharged.

TRIAL OF ELIZABETH SOUTHARD.

HON. JOHN S. CASKIE, JUDGE.

In the Circuit Court of Law for Henrico Co. Criminal Term.

(In this trial, I was one of the counsel for the prisoner, and the duties that fell to my lot rendered it almost impossible to take notes. I have been compelled to rely chiefly upon memory and a few brief notes taken by an associate. The report is therefore imperfect, but it is hoped not *inaccurate* in any important point.

R. R. H.)

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| Commonwealth | } | Wednesday, May 7, 1851. |
| <i>vs.</i> | | |
| Elizabeth Southard. | | |

For the Commonwealth, J. B. Young.

For the Prisoner, John N. Davis, William Hancock and R. R. Howison. Mr. Byrd had also been counsel for the accused, but sickness prevented him from taking part in the trial.

The prosecution was for murder, and was founded on the same Statutes cited in Hastings' case, ante page 44.

The Indictment contained five counts, each charging the blow as given the 12th day of April, 1850, to William P. Walker, and that he lingered 'till the 22nd, and then died.

1. That she struck, with an iron griddle, in her right hand held, upon his head.
2. With an iron griddle, in both hands held, upon the hind part of his head.
3. With a sharp instrument to the (Grand) Jurors unknown, in her hands held, upon the back part of his head.

4. With a hard instrument, to the Jurors unknown, in her hands held, upon the hind part of his head.
5. With an iron griddle in her hands held, on his head, gave him divers wounds, fractures, contusions and bruises.

The prisoner appeared to be about 35 years of age; she had black hair, eyes bright, round and rather prominent; her complexion was somewhat dark. She was arraigned and pleaded "Not Guilty" to the indictment.

The following were the Jury:

S. G. Waldrop, R. D. Mitchell, Bernahrd Brill, William W. Carter, H. B. Ford, Samuel Phillips, Joseph Rennie, Wm. W. Morris, R. G. Walton, William Matthews, James Simpson, Stephen B. Sweeney.

For the prosecution:

Martha Hobson and Rebecca Hobson came up with other witnesses to be *sworn in chief* for the Commonwealth. The prisoner's counsel stated, that they would object to them as incompetent, on the ground that they were persons of colour.

Young.—Then, to raise the question, I offer them at once; I shall insist that they are competent as white persons, or at least that they have no more of negro blood than the accused, and therefore may testify against her.

Prisoner's Counsel.—Let them be sworn on their *voir dire*.

This being done, *Martha Hobson* testified that she had been registered as a free negro in Henrico County Court, and produced a copy of her Register, with the seal of the Court attached. *Rebecca Hobson* afterwards testified, that she had been registered as a free negro, in the same Court, but had not obtained a copy of her register. The Commonwealth's Attorney admitted her registry without requiring the production of the record.

Young.—I propose to ask Martha Hobson concerning her parentage.

Prisoner's Counsel.—We object; we think the register conclusive evidence as to the *status* of the witness. The Court ought not to go behind it. The Statute of Va. requires, that a free negro shall be registered, I. R. C. 438. Code of Va. 466. The County Court had complete jurisdiction, and ought not to have registered her if she was not a free negro; it is *res adjudicata*, and the decision of that Court upon the amount of negro blood

may be regarded in the light of a proceeding *in rem*, and so, binding upon all. If she claimed to be of *mixed blood*, to have less than one fourth of negro blood, she might have that question specially decided in her favour by the County Court. I R. C. 423. Code of Va. 458. Acts 1832-33, p. 51. Code 468.

Young.—This Court ought not to be concluded by the Register; These persons may have applied for registers as free negroes merely because they did not wish to be annoyed by questions as to their disabilities and their privileges. The Commonwealth was not a party when they were registered and is not bound by the action of the County Court.

The Court decided that the Registry was not conclusive.

Martha Hobson, recalled.—My mother was generally called an English woman; she was darker than I am; my father was reputed to be a white man; after I was born, my mother lived with a negro man as his wife; I lived with them several years; my own husband was generally thought to be a free man of colour; his colour was light; we came from Little York in Gloucester county.

Cross-examined.—I never remember to have seen the man that was said to be my father. We were never registered in Gloucester; we only had ourselves registered here because we feared some body might interfere with us; we associated with coloured people in Gloucester; Rebecca is my daughter.

The Court.—As questions somewhat novel arise in this case, I have thought it best to call in some physicians, who are probably experts in matters relating to the distinctions between the human races.

The Prisoner's Counsel objected to such testimony. If the Register be not conclusive, then the proper mode of determining the matter is, not by *inspection* either of the Court or of supposed experts, but by evidence of parentage and pedigree. Our Statute looks to this, when it declares that a *fourth or more* of negro blood shall exclude. How can the quantity be determined by experts? It can only be known by the parentage.—III Robinson's Prac. 215, *State vs. Davis*, 2 Bailey, (S. C.) 558.

Young.—The South Carolina case is against you. I think I remember a case, from King William, which went to the Court of Appeals, and that Court decided that *inspection* was a proper

mode of deciding such questions, but I cannot name the case.

The Court.—I have no doubt I might decide upon my own inspection, and if so, I may avail myself of the knowledge of those better skilled in such inquiries than myself.

R. H. Cabell, M. D., sworn.—I think the studies of a physician tend to give him peculiar skill and knowledge as to the distinctions between the races of men; comparative anatomy is one of his studies, and that treats of the differences in the anatomical structure—as the shape of the skull—the nose; the extremities, between the various races. (After examining Martha Hobson.) I do not find in this woman any evidences of negro blood; she seems to me to be a pure Caucasian.

Cross-examined.—I do not think it would be possible for a physician to say accurately how much negro blood there was in a person; as whether a fourth or more; it would be mere conjecture; this woman's nose is depressed, but she tells me it has been broken; I find nothing in her hair, or skin or general appearance indicating negro blood.

Young.—I ask that Doct. Cabell may now be permitted to examine the prisoner; I propose to prove that she has at least as much negro blood as either of the Hobsons.

Prisoner's Counsel.—We insist that the Commonwealth is bound to try the accused as a white person. The indictment treats her as such; it no where alleges that she is a free negro, or mulatto; the case of Young 2, Va. Cases 328, decides that when the punishment for an offence is different in a white person and in a free negro, the indictment against the latter must allege that he is such. The reasoning there, applies here; the evidence is different in the two cases, and the prisoner may be taken by surprise; indicted as a white person, she comes expecting to be tried as a white person, and may be unprepared with proof of her white pedigree, which the Commonwealth seeks to assail.

The Court said as the punishment in the case of murder, was the same for a white person and for a free negro, the indictment need not make a difference, yet the Commonwealth ought not to be prevented from shewing the competency of her testimony by proving if she could, that the prisoner was not one who could object to it.

Doct. Cabell, recalled.—(After examining Rebecca Hobson and

the prisoner,) I feel very reluctant to give testimony in this case, and would be glad to be excused; I do not wish to wound the feelings of any one. (*Pressed.*)—I have an opinion on the subject; I think the prisoner has negro blood; how much I cannot say; Rebecca Hobson also has negro blood, in my opinion, probably rather more than the prisoner.

W. D. Haskins, M. D., sworn.—I think it probable that a physician may have peculiar skill, and be an expert in such matters, though it is not strictly a part of his profession, and extended observations would be necessary to give much skill. My opinion is, that all three of these women have some negro blood; the old woman very little; I think the prisoner has more than the witness, Rebecca Hobson.

Cross-examined.—It is rather the province of the *naturalist* than of the physician, to examine these subjects; probably a physician would not have much more skill than any man of general scientific reading. As to the prisoner, I judge chiefly by the hair and the skin; her hair is shorter than is usual in white women; yes, it may have been cut, but it has the appearance of having its natural length; it has also a tendency to curl—not to curl merely, but to a kind of “wavy curl,” not easily described, but which is different from the curl in the hair of white women. I do not think it possible for a physician to say whether there be a fourth of negro blood.

Albert M. Snead, M. D., sworn.—I think it pertains more to the naturalist than the physician, to solve this question, but a physician may acquire some peculiar knowledge as to it, not merely from his reading but from his practice among the two races, as they exist in our society. I am of opinion all these women have negro blood; the old woman has the least; I think the other two have about the same quantity.

Cross-examined.—I judge by the hair and the skin and some other appearances, (which need not be detailed.) There is something *indescribable* in the feeling of the hair and the looks of the skin, by which I think the presence of negro blood may be detected. I cannot say how much.

C. Wortham, M. D., sworn.—I do not think I can call myself an expert on this subject; I do not feel competent to give the

Court instruction and guidance on the question. Other physicians may feel such competency, but I do not.

For the prisoner.

Isaac A. Goddin, sworn.—I was in the County Court when Elizabeth Southard was before them in some case, and the Court decided that she was a white person, (here an extract from the record of the County Court was exhibited by *Mr. Davis.*) We had sufficient evidence, and I heard—

Young.—What Mr. Goddin heard from others, cannot be given in evidence.

Prisoner's Counsel.—Upon a question of pedigree, hearsay testimony is admissible; this is an exception to the general rule, and we state it thus broadly; if there be a restriction let the Commonwealth point it out.

After argument,

The Court said, that the declarations of a member, or connection of the prisoner's family, might be given in evidence on the question.

Jacob Holloway, sworn.—I knew the prisoner's parents in Hanover county; they were cousins to each other, and were both descendants from the Madisons of Caroline; her father and mother were regularly married and always associated with white people, and were very reputable people; I thought them white people; they always passed for such; I knew her grand parents who were Madisons; the Madisons were a dark family.

Cross-examined.—Her grandfather was a Madison; he was dark, but not darker than I have seen people who were known to be white people; I think I have heard, a long time ago, that there was some rumour of a stain in the blood of the family, but I know nothing of it myself.

Fleming P. Harris, sworn.—I knew her parents in Hanover, they were very respectable persons, and were recognized as white people; I have known her father to muster in the militia.

THURSDAY, MAY 8TH, 1851.

For the prisoner:

James H. Conway, M. D., sworn.—I do not think a physician from his professional studies, would be more skilful in detecting the differences between the races than any other well-read man.

There are *naturalists* who make this their peculiar study. The object of medical study is to become acquainted with the human system generally, and the causes and cure of its maladies, and in my opinion, this may be done to the full extent to which the science now goes, without any peculiar knowledge of the distinctions between the races.

L. R. Waring, M. D., sworn.—I think a physician need not have any peculiar skill in such matters; I cannot claim to be an expert in them, though I have endeavoured to attend to the studies of my profession. It must, to a great extent, be matter of conjecture.

For the prosecution :

M. Burton, M. D., sworn.—I have paid much attention to the differences between the human races. I have done this as a *naturalist*, and not merely as a physician. I consider myself as having thus acquired peculiar skill and knowledge on the subject. (After examining the prisoner and the two witnesses.) I think the elder woman, (Martha Hobson,) has no African blood in her; I do not find any evidences of it in her. I think both the other women have negro blood, and of the two, the prisoner seems to me to have the least.

By the Court.—I think neither of them can have as much as one-fourth of negro blood.

Neither party desiring to offer any farther evidence on the preliminary question, the whole subject involving the competency of the witnesses, was argued before the Court.

Judge Caskie.—Even without the testimony of the physicians, I might have decided this question upon my own inspection, but I desired aid and have certainly derived from the evidence strong confirmation of the view I was inclined at first to take. The questions as to the conclusiveness of the Register, and the effect of the indictment upon the rights of the prisoner have been already considered. Our Statute admits as competent witnesses, even against a white person, those free persons of color who have less than one-fourth of negro or Indian blood. As to the prisoner, I am convinced that she has African blood, but I am equally convinced that she has much less than one-fourth, and therefore she is to be tried as a white person. As to Martha Hobson, all that I have heard and seen leaves on my mind the

strong opinion that she has no African blood at all; that she is a pure Caucasian, or if her blood be mixed, that she may have a slight tinge, much less than a fourth of Indian blood. As to Rebecca Hobson, I at first supposed that she had much more negro blood than the prisoner, but this view has been modified by a closer inspection, and I am now of opinion that she has very little if any more, and that her quantity of African blood is much less than one-fourth. With these views, I must decide that both Martha and Rebecca Hobson are competent witnesses.

(*Mr. Young* being absent, *B. B. Minor, Esq.*, acted as Prosecuting Attorney.) The evidence for the Commonwealth commenced.

John H. Walker, sworn.—I heard that William Walker had been much hurt at Martha Hobson's; I think I heard of it Saturday, the 13th of April, 1850. I went to the house and found him sitting up by the chimney side, with his head bound up. I asked him if he would come home with me; he said, "not then;" the next evening he came to my house and he staid there until he died, which was, I think, on the Monday week after he was hurt. He sometimes walked about for a day or two after coming to my house, but did not talk much; he seemed in a stupor several days before he died.

Cross-examined.—He was my cousin; we did not have much to do with each other; he would take "sprees" sometimes, but I did not think he was then more violent than other men; he was a very peaceable man when sober. (The Commonwealth's Attorney intimated that he would call this witness again.)

J. Mull, sworn.—A few days after this affair happened, I saw William Walker, walking on the side way in Rocketts; I think he was on the other side of the bridge over the creek that runs through Rocketts. He had his head tied up; I joined him and we talked some; I asked him how he got hurt; he said he got it "skylarking" at Martha Hobson's. He went on to his brother's. I don't think I saw him out afterwards.

Cross-examined.—"Skylarking" is a phrase often used by sailors; it means pretty rough play, as if we were to take all the tables, desks, books and inkstanks in this room and throw them all about in confusion. I knew William Walker; he got drunk sometimes, but when sober he was quiet.

Martha Hobson, sworn.—The night this thing happened, Betsey Southard was at my house, and so was William Walker; some time after dark we took something to drink; they commenced romping about the room; they proposed to dance; I told them I didn't believe they could dance as they did in old times; they romped about the floor, and after a while Bill Walker went out and got one of the Watchmen to come; when he came he asked what was the matter; we were all quiet; the Watchman said to Bill Walker, "if you come and make a fuss again, I will put you up the chimney." When the Watchman went away, Betsy asked Walker what he brought the Watchman for; he said, for her; then she proposed to send out for some liquor and said if he wouldn't pay for it, she would. The liquor came, and after awhile they played again, and Betsey threw him down on the floor; they were down some time, and then they got up and had another wrestle and she threw him again. Then she got up and I saw her go off with her body half bent, (here the witness shewed the position,) towards the fire-place. He ran after her, and kicked her in the mouth, (Betsey said,) so hard it shook every tooth in her head; then she said, "Oh! damn you, are you up to that," and she caught up this griddle and struck him on the back of the head as he turned off. (The griddle was of iron and revolved upon a centre.) He fell right down and lay still; I said, "Lord, Betsey, you've killed him;" she said, "Oh, no, he ain't dead, let him bleed a little." After awhile he came too; I put some soot from the chimney on his head, and bound it up with a bandage and he laid down on the bed.

Cross-examined.—William Walker lived with me as my husband, we were never married. We all drank that evening; I had drunk some as well as the rest; I don't know why Walker went for the Watchman; he didn't like Betsey much any how; I thought they were playing at first, but I think he was getting very "mad" when she threw him down; I think he was "mad" when he ran after her to the chimney; he ran very fast; after he kicked her, he turned off to the right; there was a table the way he turned; under it there was a skillet with a handle to it, and there were some other things. When they fell down the first time, they staid down, it seems to me, perhaps a quarter of an hour; they said nothing all that time. I had once a little dif-

ficulty with Elizabeth Southard, but nothing to speak of. Rebecca was present most of the time the night this thing happened to Walker.

Rebecca Hobson, sworn.—I was out of the house the first part of the night; when I came in, they were dancing and playing about the floor: I drank, I think, one glass; Walker went out and got the Watchman, but when he came, we were not doing any thing, and he went away; Betsey and Walker wrestled and she threw him; I only saw her throw him once; she had said to me, “pull my cape down,” and I pulled it down; while they were on the floor, he kicked her in the mouth, then she ran and got this griddle and struck him on the head. He fell down and seemed dead, but came too. When she took the griddle she said, “Oh, are you up to that.” I didn’t hear her say any thing more.

Cross-examined.—I did not see Walker run up to the chimney place and kick Betsey in the mouth; I did not see her go off, half bent, to the fire-place. I did not see mother put any soot on his head. There was a skillet under the table near him; there was an axe in the house, I think it was near the door; they fell nearer to the door than to the fire-place. Walker was sometimes very violent; he had choked my mother a few days before. He was not a large man. I think I do remember some difficulty between mother and Betsey.

L. R. Waring, M. D., sworn.—I was called to see William Walker, I think, on Wednesday evening, before his death. I found him in a state approaching stupor. There was a wound on his head which penetrated through the scalp; the skull was also cut through and a piece of the bone driven in upon the brain; I used the trephine to elevate this fragment of bone; I had little hope of his life; he continued to live, generally in a comatose state, until Monday, when he died. The blow, I think, might have been given with an instrument like this griddle, and must have been struck with considerable force. I have no doubt the blow caused his death.

Cross-examined.—The wound was on the left side of the posterior part of the head; it was oblique in its direction; I saw no mark of the foot of the griddle on the skull; the deceased seemed to

me to be a man of ordinary size, and quite muscular, but I could not judge accurately, as I always saw him lying down.

John H. Walker, recalled.—On Wednesday evening, William Walker was much worse and was put to bed; he said he did not think he should ever get well; he seemed in earnest when he said it; I asked him if I should send for a doctor, and he said yes.

The Prosecuting Attorney, upon this foundation and the former evidence, now proposed to give the declarations of the deceased as to the person who struck the blow, and its attending circumstances to the Jury.

Prisoner's Counsel.—We shall oppose this, not only on the ground that according to the common law decisions, the foundation is not sufficient, but on the farther ground that the Constitution of the United States forbids the introduction of dying declarations, by necessary inference from Art. VI. Amend. (Code of Va. 51.) How can the accused be “confronted with the witnesses against him,” if these declarations of a man not under oath, and *not subject to cross-examination*, can be received? and so, *Judge Baxter* of Georgia, has recently ruled out dying declarations—(in a case reported in *Washington (Ga.) Gazette* and in the *Richmond Times*, May 8, 1851.) *Hunter Hill's* case does not shut up this question. There, nothing was relied upon by the prisoner's counsel, except the *Bill of Rights of Va.*; the Constitution of the United States was not spoken of. But if dying declarations can be received at all, the rule now approved will exclude them in this case. It is not enough that the deceased thought he should never recover.—*Cowen & Hill's Notes to Phillips on Ev.* iii. 607, 608. He must think death to be impending, so that his mind is solemnized by the thought.

Minor.—I. The Bill of Rights of Va. is broader in its language than the Constitution of the U. S. Compare Art. 8, Bill of Rights with Art. 6 amend. Constitution. So, the General Court, in deciding that the Bill of Rights did not exclude dying declarations, necessarily decided that the Constitution of the U. S. did not. II. The rule only requires that the deceased shall believe he must soon die; this was the case here.

The Court.—I do not think Art. VI. amend. Constitution of the U. S., applies at all to the State Courts, or gives any rule to

them. The words are, "an impartial Jury of the *State and District* wherein the crime shall have been committed, *which district* shall have been previously ascertained by law." This must refer to the U. S. Courts. But while I am bound by the decision in Hunter Hill's case, and am perfectly satisfied of the propriety of admitting dying declarations to a Jury, yet, in the case at bar, I do not think the mind of the deceased was so bereft of all hope of life, and so impressed as to the solemnity of his position, as to make his declarations proper evidence; I therefore exclude them.

The evidence for the prosecution closed.

For the defence:

William F. Carvedo, sworn.—The morning after this affair, I heard Isaiah Walker say, his brother was killed; I went to the house and peeped through a window and saw Wm. Walker sitting up in bed, I asked him who struck him, he said a woman up stairs: I went part of the way up stairs, just high enough to see, and I saw a woman lying on the floor, wrapped up in old clothes or something of the kind; I could not tell who she was. A man named Peter Bell was up there, just buttoning on his clothes; I saw no other woman.

Joseph Holloway, sworn.—I knew the prisoner in Hanover, and never heard any thing against her. She was always considered of a peaceable disposition; she staid with my mother sometimes and I heard her speak of her favorably. I have known nothing of her since she was in Richmond,

Fleming P. Harris, sworn.—I have seen the prisoner in Hanover where her parents lived; I never heard any thing against her there, but in the last four or five years she has been beyond the reach of my observation.

The evidence closed.

FRIDAY, MAY 9TH, 1851.

The argument before the Jury commenced at 9 A. M. and closed at about half past 12. The Jury retired and in half an hour returned with a verdict of "Guilty of Voluntary Manslaughter," ascertaining the term of confinement in the penitentiary at one year.

A motion for a new trial was submitted without argument and

overruled; *the Court* remarking that he had seldom seen a case in which the verdict more accurately responded to his view of the law and the evidence.

Exceptions had been taken in behalf of the prisoner to various decisions of the Court, with a view, if expedient, to apply to the General Court for a writ of Error, but the prisoner upon her own motion, after conference with her counsel, signified her assent to the verdict and requested that sentence should be at once pronounced, which was done accordingly.

TRIALS OF ED. CLEMENTS AND TH. REID.

(I am indebted to William T. Joynes, Esq., U. S. District Attorney for the Eastern District of Virginia, for documents forwarded to him by the proper authorities giving information as to the transaction upon which the two trials now to be reported, are founded. From these documents I have compiled a brief preliminary narrative.)

On the 4th of February, 1850, the Schooner J. B. Lindsey, Capt. S. S. Riggs, came into the Port of St. Thomas, West Indies, with signals of distress, and on landing, the captain and two men who composed the whole crew, reported that while at sea near Trinidad, the mate, John Heeney and a passenger named John Walker had been murdered by two of the crew named Edward Clements and Thomas Reid, who had afterwards left the schooner in an open boat, and they were supposed to have landed somewhere on the Spanish main.

The American Commercial Agent at St. Thomas, Charles H. Delavan, Esq., took prompt measures for their discovery and arrest. He had hand-bills printed and extensively circulated, in which the men were described, and a reward of two hundred dollars was offered for their apprehension. Mr. Delavan addressed a letter to Louis Baker, Esq., American Consul at Laguayra, Venezuela, inclosing one of the hand-bills, and earnestly asking his attention to the subject.

In a very short time, the following letter was received by the Chief of Police at Laguayra, from the Custom-House officer at Higuirote, a small port on the Atlantic, not far from Laguayra.

(TRANSLATION.)

*Republic of Venezuela, Comptroller's Office,**Custom-House.*

HEGUIROTE, Feb'y 11, 1850.

To the Mayor of the County, LaGuira :

I have passed to the Honorable Secretary of State on this day, under the number of 73, a communication where I inform him that a boat had reached this port with two Englishmen, who stated they came from Maracaibo in five days of navigation, and as they have not presented any document that will justify what they say, or the place they started from, and it being very strange that a small boat should have made such a long navigation, as that from Maracaibo to this port, and having stated that their voyage was for LaGuira, this Custom-House has ordered the two Englishmen to pass to the port of LaGuira in the Venezuelan Sloop St. Johns, Capt. Elestino Ganis, and that they be presented to the Mayor, so that they may be examined and that their Consul may make convenient investigation, for no civil authority whatever is in this port now that could do it. The boat, with its appurtenances, remains in this port, which you will dispose of, though said Englishmen have offered it for sale for the sum of 40 dollars. I remain your obedient servant,

JUAN JOSE FERRAI.

When these men arrived in LaGuayra, Consul Baker saw them and comparing them with the description in the hand bill, was convinced they were the same therein mentioned. He immediately wrote to Mr. Delavan, who communicated with Commodore Parker of the U. S. West India Squadron, and the sloop of war Germantown, Commander Charles Lowndes, was sent to LaGuayra. In the mean time, by request of Mr. Baker, the boat with two pistols, a dirk knife, and some other things found in it, was sent from Higuirote to LaGuayra.

On the arrival of the Germantown, Lemuel Franklin and James Jackson, two of her crew, recognized the two men as Edward Clements and Thomas Reid with whom they had served aboard the United States sloop Saratoga, at Norfolk. Judicial examinations were made by the Venezuelan authorities ; the Tribunal of Justice took the depositions of witnesses and certified them to the office of the American Consulate. In one of these depo-

sitions, James Jackson testified, "que habiendo ahora dias ido á la carcèl le preguntaron duos individuos que se decia a bordo de ellos; que si sabia lo que les harian; que el esponente entonces les pregunto si era cierto que habian matado el piloto y el pasajero, y Clements le contesto; que si no habiera sido por tres botellas di Brandi que tenian abordo no habiera sucedido nada; pero como el piloto le pego con un pasador, lo mato con un cuchillo; que entonces el pasajero corrio à auxiliar al piloto, y como estuviese Reid gobernando el timon lo dego, y corrio sobre el pasajero y lo hecho à el agua;" que el declarante, "then asked them if they had wounded the Captain, and they replied they did not know he had been wounded; they had no such intention, as the Captain was a very good man."

On the 10th of April, 1850, by order of the President of the Republic, transmitted through the Governor of the Province, the two men were placed at the disposal of Consul Baker, together with the boat and its accompaniments. The Germantown sailed with them for the United States, and on the 5th of June, 1850, they were brought into Norfolk by the U. S. Steamer Vixen, Lt. Commanding Ward, to whom they had been transferred from the Germantown. After examination they, the two men, were sent to Richmond for trial in the United States Circuit Court.

R. R. H.)

HON. JAMES D. HALYBURTON, JUDGE.

In the United States Circuit Court, for the Fourth Circuit, and Eastern District of Virginia.

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| United States | } Wednesday, November 27, 1850. |
| <i>vs.</i> | |
| Thomas Reid and Edward Clements. | |

For the prosecution, William T. Joynes, District Attorney.

For the prisoner Clements, Wm. P. Byrd, Wm. A. Cocke, Joseph M. Carrington.

The prosecution was under the Act of Congress, 30th April, 1790. Art. 3168. Gordon's Digest 929-930.

"If any person commit upon the high seas, or in any river, haven, basin or bay, out of the Jurisdiction of any particular State, murder or robbery, or any other offence which, if committed within the body of a county, would, by the laws of the Uni-

ted States be punished with death ; or if any Captain or Mariner of any vessel shall piratically and feloniously run away with such vessel, or any goods or merchandise to the value of Fifty Dollars, or yield up such vessel, voluntarily to a pirate ; or if any seaman shall lay violent hands upon his commander, thereby to hinder and prevent his fighting in defence of his ship or goods committed to his trust, or shall make a revolt in the ship, every such offender shall be deemed, taken and adjudged to be a pirate and felon, and being thereof convicted, shall suffer death ; and the trial of crimes committed on the high seas or in any place out of the jurisdiction of any particular State, shall be in the District where the offender is apprehended, or into which he may be brought."

The Indictment contained five counts, charging the prisoners jointly, with the murder of John Heeney, on the 27th of January, 1850 ; the murder was charged as done "piratically, wilfully, feloniously and of their malice aforethought," on the high seas, not within the jurisdiction of any State, or of any of the United States, but within the jurisdiction of this Court.

1. The first count charged the murder as committed with a pistol, discharged by Reid, Clements present, aiding and abetting.
2. The second charged the murder as committed with a pistol discharged by Clements, Reid present, aiding and abetting.
3. The third charged the murder as committed with a dirk, held by Reid, Clements present, aiding and abetting.
4. The fourth charged the murder as committed with a knife held by Clements, Reid present, aiding and abetting.
5. The fifth charged the murder as committed by both, with instruments and weapons to the (Grand) Jurors unknown.

The indictment farther said, that the Eastern District, 4th Circuit of Virginia, is the District and Circuit to which the accused were first brought.

The prisoners elected to be separately tried, and the case of Edward Clements being ready, his trial proceeded.

He appeared to be from 25 to 30 years old, had light brown hair, high cheek bones, light grey eyes, and rather well shaped features ; his height was probably 5 feet. 9 inches.

He pleaded "Not Guilty" to the indictment. The arraignment was joint, and each prisoner pleaded the same plea.

The Court.—A question may arise as to the mode of obtaining

the Jury ; I am of opinion that I might proceed according to the law now in force in this State, but as it has been heretofore held in full Court that a prisoner is entitled to his peremptory challenges, and as I do not wish, sitting alone, to change the rule, I will allow the usual number of peremptory challenges, and then proceed to organize the Jury according to the existing State Law. This course will be most favorable to the accused.

The following were the Jury :

Peter Crew, Robt. P. Richardson, Leonard Slater, W. L. McMinn, J. B. Dupuy, John A. Lancaster, William Bootwright, Jno. D. Shell, Alex. Garrett ; Charles Stebbins, Peyton G. Bayley, E. M. Porter.

For the United States :

Solomon S. Riggs, sworn.—I was Captain of the Schooner, J. B. Lindsey, during the past winter ; the prisoner was on board as a sailor before the mast. On the 27th day of January, Sunday morning, we came out to sea from Port of Spain, Trinidad ; we got out between 8 and 9 o'clock in the morning ; things went on pretty well during the day ; that afternoon a pistol was fired on deck ; I was lying in my berth ; I was alarmed and went on deck and asked the mate what that pistol was fired for ? he said he did not know, he would go forward and see. The mate, John Heeney, then went forward, and after awhile returned and said he would soon give me an account of it. I went to my cabin ; in a short time, the mate handed me two pocket pistols ; I took them and said, " they are more of men than I took them to be." My watch was out at 8 o'clock ; Clements and Castello were in my watch ; Reid was in the mate's watch, which was from 8 to 12. Before I left the deck, I said to Clements, " keep a good look out, will you ?" He spoke kindly and said, " yes, sir." It was a fine moonlight night ; I left the passenger, John Walker, at the wheel ; the mate was also on deck ; I went to the cabin and turned into my berth. Between 10 and 11 o'clock, I was awakened by a sound—it may have been a pistol shot or a shrill scream. I jumped up, caught in my hands two small pocket pistols and ran upon deck ; the cabin had two doors, each opening to the stern ; the starboard door was shut ; the larboard open ; when I got on deck I saw persons on the starboard side, running forward, half bent, between the cabin-house and the side of the

schooner. I found the mate lying by the wheel—a stream of blood running from his body to the larboard; he was groaning and crying, “Lord! have mercy on me!” I tried to encourage him and to get him into the cabin; presently I heard some persons running aft on the larboard and starboard sides of the cabin house; I don’t know who was on the starboard, but the man on the larboard was Reid; I saw him, and saw the flash of his pistol, as he fired at me; I felt myself hurt and staggered back, and fired my left hand pistol, but missed him; I got into the cabin and sought to close the door; the cook was with me; I found my shirt bosom was all bloody; immediately afterwards three heavy blows were struck on the starboard door and a voice, which I took to be Clements’ cried, “Cook! come out and be murdered!” I think this was only to draw my attention, for instantly Reid again fired at me through the open door; I returned his fire, and when the smoke cleared I saw him lying on the deck; I think my ball struck him somewhere between the mouth and the eyes. I said to the cook, “I have got one down,” and I think I said, “now don’t you look pretty, you old pirate,” or something like that; I told the cook to look for my powder; I thought it was in my chest, which was opened, but presently I found it in my pocket and loaded both my pistols; in the mean time, the man lying on deck got up and went away; the cook took the two little pistols that had been handed to me by the mate, and loaded them. I put some brown paper on my throat and breast and drank vinegar during the night; I bethought me of a small after-cabin, behind and lower than the chief cabin; I said to the cook we would get in there and defend ourselves; I slipped aside the slide; we got in and left the slide open one or two inches. We staid there until after day. Some one came on the top of the cabin house; I went into the cabin and tried to shoot him through the stove-pipe hole, but I could not get a chance, and could not see who it was. The cook and I remained in the cabin, and after cabin, during Monday. In the afternoon I saw Clements in the fore-castle; I could see through the *run*, under the cabin deck, and a plank was off the bulk head of the fore-castle; about dusk, the cook was in the after cabin; he cried out, “Captain! they are coming aft;” I heard one of his pistols snap and then he fired another, we heard a noise in the hold;

after awhile the cook came out and loaded his pistol and we kept guard over the open (larboard) door. The next morning, (Tuesday,) at about day-break, we saw some birds, "large land birds," sitting on the taffrail; thinking from this that no body could be near, the cook stepped out and shut the door, and we secured it with a laniard. After this, we heard a pistol fired in the hold, the ball from which, as I afterwards found, struck the forward bulk head of the cabin. About 9 o'clock, I looked through a crack in the forward folding door of the cabin, and saw Clements walking up and down from the mainmast forward with a horse pistol in each hand. He was too far for me to shoot him. I did not then see Reid, but after awhile I saw him on deck, with his face tied up in a handkerchief and a pistol in each hand. Presently I heard Clements cry out to me, "Give us the boat, if you don't give us the boat we will scuttle the vessel." I made no reply that I remember. In a short time the man, Castello, came aft with a cutlass in his hand to the starboard cabin door, and said something; I did not hear what he said, I was so eager to shoot him; I raised up the binnacle door and levelled my pistol at him, close at his head; *the pistol snapped!* Castello left and went forward. The boat was hanging astern at the davits; Clements cried out, "what do you say, can we have the boat?" I said, "take the boat if you will go off and leave us alone." He asked, "wont you shoot us?" I said, "no, I will not shoot you:" but nevertheless, I intended to shoot them through the binnacle holes when they came aft; I thought, under the circumstances, I was justifiable in doing this. As they came aft, I saw Reid with his face tied up and a pistol in each hand. Clements and Castello had no arms that I saw. One whom I did not see, shut the binnacle slides with the muzzle of a pistol, so I could not see them; I heard the boat fall into the water; they carried her forward. Through the crack in the forward cabin-door, I saw them take two coffee pots, a tea kettle and a pan from the *gally*, and I saw them cut the foot rope of the square sail yard. I sat on my chest feeling very sad. I suspected that they would scuttle the vessel. I heard two blows struck and thought they were scuttling her. I said to the cook, that if they scuttled her, we would rush on deck and kill or be killed—that was our only hope. After this, all was quiet for a time; I heard

some one running aft; it was Castello; he seemed frightened; he said, "Captain, the boat is astern!" He pulled at the door, I said, "if you pull open that door, I will kill you, if my pistol will fire." He pushed aside one of the binnacle slides and said, "Captain, the boat is astern, if you don't believe me, look out!" I ordered him forward; he obeyed and then I opened the door and saw the boat about three hundred yards astern with Clements and Reid in it. I came out and as Castello approached me, I presented both my pistols at him, and said, "your life is in my hands." He said, "Captain, I am innocent of this killing;" (Stopped by prisoner's counsel.) I asked if he had any arms. He said he had one pistol, which he gave to the cook, who fired it off to leeward. The boat seemed to be pursuing us; we got up part of the mainsail and got under way; the last I saw of them and the boat, they were bearing off easterly. Our schooner was of 119 tons, and with only two men, and myself disabled, we had much difficulty, but we got safely into St. Thomas.

By Joynes.—Reid, the mate and the passenger, were on deck when I went below Sunday night; I saw Walker at the wheel at 8 o'clock that night, and have never seen him since. I saw Clements in the forecastle Monday. The *cabin-house* is above the deck, and from its forward door you could see the whole deck forward. A pistol was fired Tuesday morning Clements was walking backwards and forwards from the mainmast; he had two horse pistols, (here two were produced,) these are like them. The binnacle for the compass, is abaft the cabin and has lights, so that when the hanging door inside is open, the cabin is lighted from the binnacle. The aft larboard door had been hooked back, and remained open until Tuesday morning; before it was closed, we had seen large birds sitting round on the taffrail, probably drawn by the body of the mate which was becoming offensive. After the boat was nearly out of sight, I had the body moved; it looked badly and was very offensive; I did not examine the wounds; I felt badly; it is probable the rudder ropes had chafed the legs, they had black marks upon them. I told Castello to sew him up in a hammock and put a bag of sand to his head and feet. I read a prayer over him and told them to commit him to the deep! I turned my back and did not see them. I never saw Castello during the affair, until Tuesday morning:

There were but two men in the boat, they were Clements and Reid. I got on deck about 10, and at 12 o'clock got an observation of the sun; I think my latitude was $13^{\circ} 32'$. When I left the deck Sunday night, we were under mainsail, foresail, jib and flying jib; when I came up, the fore sail was hanging, torn to pieces; I suppose the peak lashing gave way, and the throat lashing held on, and so the gaff dropping, the sail swayed from side to side and was torn. The J. B. Lindsey hails from Norfolk, and is owned by Daniel E. Simonds of Norfolk, Wm. W. Simonds of Elizabeth City, and Wallace Bray of North Carolina.

Cross-examined by Byrd.—There were seven persons on board at 8 o'clock Sunday night, Heeney, Walker, Reid, Clements, Castello, Smith the cook and myself. When I was aroused and came on deck, I do not know how many persons were running forward on the starboard; I did not see Castello; the cook was in the cabin; I was in such circumstances of excitement, that I could not tell how many persons were on the starboard.

Cross-examined by George Blow.—(Mr. Blow had been counsel in Norfolk and attended during part of the trial, but did not stay to argue the case before the Jury.) I shipped Reid and Clements at Elizabeth City; I had found Castello aboard the J. B. Lindsey when I took her; she had just returned from Boston. Reid and Clements acted well in the cruize to Trinidad; I liked them and spoke highly of them. At Trinidad they went ashore and two black men came along side and said these men had sent them to work in their places. The day we sailed, a white boy about 18 years old, was brought aboard without my knowledge; I thought it wrong and had him sent off. Clements after that offered to pay his passage; he said he was an acquaintance of his, and he wanted him to go to the United States; Clements and Reid went ashore with this boy. We ballasted the 26th; I thought they looked and acted "a little suspicious" then; when the mate handed me the two pistols, Sunday afternoon, and I said "they were more of men than I thought," I little thought they had a chest almost full of arms; I don't say a chest full, but I think five pistols are *part* of a chest full at least; when I ran out, I was in my drawers, bare headed and bare footed, with a pistol in each hand; I was alarmed because of the noise, and

because I heard a man crying, "Lord! have mercy on me." I can't tell any thing of the distance between the wheel and the house; the cabin floor was three steps under deck, and the top was high enough for a man to stand upright with his hat on; the larboard door was fastened back by two nails, one in the door and the other in the house. No, sir, I did *not* fire my pistol first at the man, at the corner of the house; *he* fired first; I fell back upon the wheel: I did *not* strike my throat on the nail in the door; I do not know that the surgeon of the Germantown ever examined me; when the pistol was fired, I did not think I was shot by the ball; I thought it probable 'twas the powder; I have never felt the ball, but it may have clipped my neck. At 10 o'clock I suppose Reid ought to have been at the wheel; with the sail that I left on the schooner if the wheel had been left, she would probably have run up into the wind's eye and *shaken*; I did not hear any thing of this sort while in my berth. When Castello came to the door with the cutlass in his hand, I did not trust him. We found a mashed ball in the cabin, which had passed through the lid of my chest; I have no doubt this was the *second* ball of the two that Reid fired at me.

Re-examined by Joynes.—I did not find any more pistols, but saw balls which were brought to me from the forecastle—they were large—the *mashed ball* we found, had too much lead in it to have been a pocket-pistol ball. After I had shot Reid and he fell, Clements cried out, "Give us the boat." I told him he should not have her, I wanted to shoot another of them. I felt encouraged having Reid down. I bought these pistols in Trinidad; I felt suspicious after the lad was found aboard, and I heard—(stopped.) I bought them because I felt suspicious. At Elizabeth City, Clements and Reid came aboard together, and Clements asked if I could give them a berth; I told them I could give one; he said one could not go without the other, so, as another man, whom I had expected had not come, I shipped them both. The mate, when I found him wounded, made no statements as to who did it. The J. B. Lindsey sailed under the "stars and stripes." We went into St. Thomas with colors at half mast and Union down. Many persons boarded us, the American Consul among them.

THURSDAY, NOVEMBER 28, 1850.

Thomas Castello, sworn.—I was aboard the J. B. Lindsey. We sailed on the 27th of January, which was Sunday, from Five Islands, Port of Spain. In the afternoon, between 2 and 4 o'clock, while I was at the wheel a pistol was fired, forward. Captain Riggs was lying down in his berth; he came on deck and said something to the mate; the mate went forward; I looked forward and saw Clements with a small pistol in his hand, and one of his fingers was bleeding. In a short time Clements came up and gave the mate two small pocket pistols, and said, "I am very much obliged to you." Nothing else occurred 'till about 8; Clements was at the wheel from 6 to 8. At 8 the passenger John Walker took the wheel. I went forward and Reid and Clements stood just about amidships; they had a bottle and very politely asked me to take something to drink; I took the bottle but did not drink any thing. I went to the forecastle and turned in to sleep. Some time during the night I was awakened, I suppose, by the noise of pistols; I can't say what time of night it was. I got out of my berth and was going on deck, but found the forecastle doors shut: in this hot climate I generally slept with them open. I made some noise and tried to open them, but found them fastened. Presently Clements came to the forecastle with a pistol in his hand and said, if I would stay below and make no noise, I would not be hurt. I did not then see Reid, but he came afterwards and told me to keep up a good heart, I should not be hurt; Clements came and talked the same way, and they kept running, first one and then the other to the forecastle to see if I was there. I tried to get out by knocking a plank off the bulk head of the forecastle, which had been started at sea, but finding I could not pass, I lay down in my berth and took it coolly. Soon afterwards, Reid came into the forecastle and said, "My God! I am shot;" Clements came directly afterwards, and stood on the steps; Reid said, "go on deck and avenge my death, shoot somebody!" then he said, "my pistol ball, which I fired at the Captain was enough to knock down a horse, and yet his ball knocked me down." After awhile he said he did not believe he was as much hurt as he thought he

was, and he got up, tied a handkerchief round his face and went on deck. I then asked Clements what *this row* had all been about; he told me, after I came into the forecastle, Capt. Riggs came on deck and told him to sway up the sails; he said he would do it about 12 o'clock; then Captain Riggs told the mate to knock him in the head with a handspike. Clements then asked me what I was willing to do; before I could answer, Reid called Clements on deck—nothing farther occurred until Monday morning; I continued in the forecastle until about 8½ or 9 o'clock, they told me I could come on deck. When I came up I saw the passenger, John Walker, lying in a pool of blood between the mainmast and the galley; I judged he was dead; Clements and Reid both had arms; each had a large pistol and a cutlass was lying near, a small pistol was on one of them; Clements and I had quite a long conversation; I asked him who killed the passenger; he said—(here Byrd objected: we are not now on the alleged murder of Walker but of Heeney. *The Court* said it was admissible evidence as part of the *res gestæ* and as illustrating the motive)—that Reid stabbed the passenger and that he came very near getting Reid overboard and would have, but for his assistance. I asked him where was the mate; he said he was abaft the house, dead! I asked who killed him; he said, "Reid stabbed him and I fired a pistol at him." Clements then told me that if I tried to go aft, Captain Riggs would shoot me as quick as he would them. He then said, that they wanted me to have nothing to do with the killing until they had killed the Captain, then I was to kill Smith the cook. He asked me if I was willing to join them and not try to go aft. To save my own life, I told them that I would; our conversation stopped there; nothing remarkable occurred 'till about 1 o'clock, when Clements asked me to help to bring the passenger forward; I went and helped; he was *dead*; Clements cut both the pockets of his trousers out; there was nothing in them but a piece of tobacco and a knife; Clements asked me to help to put him on the rail; I helped, and when the body was on the rail, he took him by both feet and flung him overboard. In the afternoon they asked me what I thought they had best do; I told them I thought the best thing they could do would be to take the boat and leave the vessel; Clements was the man who talked most, Reid has very

little to say at any time; towards dark Clements told me he wanted me to go down and get the boat sails out of the hold; we went down into the hold; a pistol was fired from aft; I was about abreast of the mainmast. We came on deck again. Afterwards Reid went down into the forecandle; Clements took a seat not far from me and said he was going to sleep; he handed me a large pistol; I sat on the end of the windlass about an hour; I judged Clements was asleep; Reid was in the forecandle; I put the muzzle of the pistol within a few inches of Clements' head and pulled the trigger; *the cap exploded, but the pistol did not fire!* Clements jumped up and asked me what I snapped at; I told him I thought I saw somebody aft. As soon as the cap went off, Reid came on deck; Clements took the pistol and went into the forecandle; I don't know what he did; when he came up he and Reid sat down together and told me to go to sleep, *but I did not!* Nothing more occurred until Tuesday morning. We heard a noise in the cabin as if Capt. Riggs was nailing something; Clements said he would go ask him for the boat; he went down into the forecandle and called to the Captain, but *we* did not hear any answer that we could understand, and Clements could not understand, either. He came on deck, gave me a cutlass (the same I had seen before) and told me to go aft and ask the Captain for the boat. I went aft and asked Capt. Riggs to let me come into the cabin; he made no answer; I suppose he could have shot me, as my head was where he might have blown it all to pieces. I heard no pistol snapped. I went aft and told them the Captain said they might have the boat. Clements and I went down into the hold and brought up the boat-sail and rigging. He then took the fore peak halliards and made them fast to the painter of the boat, which was hanging at the davits; he came forward and we then all went aft and Reid got up on the house and shoved too the binnacle slides; Clements and I cut the boat adrift; I used a small pocket-knife which I had; while we were there, Clements picked up from the larboard side of the deck a knife all covered with blood and handed it to Reid who took it; no remark was made about it; yes, sir, it was like this one, I think it was the same, (the knife shewn in Court was a dangerous weapon, with a dirk blade about 6 inches long, fixed in the handle.) As soon as we cut the boat

adrift we went aft and hauled her forward ; the boat was on the starboard side ; the schooner would come up to the wind and touch and fall off again ; she was, in a manner, hove too. Reid went below and handed up his and Clements' clothes, mine were not touched. Clements and I rolled the water-cask forward ; they sent me into the galley to bring out coffee pots, a tea kettle and any victuals that might be there ; I went to the galley and brought out two coffee pots, a tea kettle, a pan with hardly enough of provisions for one man for a day. They filled the coffee pots and kettle with water ; Clements went down into the forecabin, and while he was there I heard a pistol fired, I suppose, by him. He soon came out ; he said " we will commence scuttling the vessel, that will entice the Captain out and we will shoot him ;" I did not believe he would do it ; he was all *talk and gas*. Previous to this I had taken the axe and hidden it behind the water-cask. Reid went into the boat, Clements and I passed in their clothes and all the other things. Clements stood behind me with a pistol in each hand ; I got over the rail ; Clements passed into the boat so far that he could not get back ; I jumped back in board, seized the axe and struck at the painter, (boat-rope,) the first blow I missed it—the second I cut it in two ! I then fell down flat on the deck, so that if they fired, they might not shoot me because of the bulwarks. They had asked me if I wanted my clothes. After lying awhile I rose and saw the boat astern ; I went down into the hold and sung out to the Captain that I had cut the boat adrift, and she was astern. I heard no answer ; I then went aft, turned aside the body of the mate, eased off the main sheet and put the wheel amidships ; then went to the cabin and said to Capt. Riggs that the boat was astern ; the Captain came with a pistol and told me to go forward or he would shoot me ; I went forward, eased off the jib-sheets—hauled them aft and hoisted all I could of the foresail. I went walked aft ; Capt. Riggs and Smith were on deck, each with a brace of pistols ; the Captain said, " I have a great mind to shoot you ;" I told him I had nothing to do with the row and stated to him what I have stated here to you. He asked if I had arms ; I gave him a small pistol which Reid had given to me ; the cook fired it off. Some time afterwards, the Captain told me to take the body of the mate forward and sew it up in a ham-

mock ; one arm was in the sleeve of a large over coat—the other sleeve was off ; the coat was bloody and smelled badly ; I took it off and hove it overboard. The mate's body was so offensive that I could not examine it, but I saw clotted blood on the left breast and right side ; it was swelled so much that I could not make a large navy hammock meet around it. The task made me so sick that I vomited. The sides of the vessel were covered with large birds, called " boobies " in the West Indies ; I did the best I could ; I put a bag of sand at the head and one at the feet ; the Captain read a prayer and Smith and I committed the body to the deep.

By Joynes.—I next saw these men, Clements and Reid, in the City Hall, Norfolk. I never saw them have arms before, except a small pistol ; it is very common, however, for seamen to have a small knife, a dirk knife and a small pistol. The white boy, Capt. Riggs has spoken of, was at the Crown and Anchor, Port of Spain, Trinidad. Reid and Clements staid there ; the mate and I sometimes went there ; the boy had sometimes shewn us round ; he said he wanted to go to the United States ; mate told him perhaps if he asked, the Captain would let him go. Reid and Clements came off Thursday night with this boy. I did not tell the Captain, because I know that most rows and bad blood aboard ship are caused by tales carried backwards and forwards between the forecastle and the cabin. The mate asked me if the boy was aboard ; I told him to go and see. A black boy brought them off ; I did not see any clothes. At Trinidad, Reid and Clements were a good deal ashore, and they had two negro men to work in their places. The J. B. Lindsey's house was about 4½ feet high ; standing abaft I can see over the house ; it may be three feet or more from the house to the wheel. I don't know who was at the wheel from 8 to 12, but I know Walker was there at 8 ; if nothing had occurred, my watch would have been from 12 'till 4, and the Captain and Clements would have been with me ; I was in the forecastle from 5 to 6 minutes after 8 until Monday morning ; I am sure I did not go out ; when my pistol missed fire Monday night, if it had gone off it would certainly have blown Clements' brains out. It was within a few inches of his head.

Cross-examined by Byrd.—It was Clements who said they would

scuttle the vessel and draw the Captain out to shoot him. I had no right to believe or disbelieve whether they would scuttle her or not. I hid the axe with a view to cut the painter and cast them adrift; when the Captain came on deck, I think the boat was so far astern, that a pistol shot would have done no harm. They may have gotten ashore sooner than we; we made almost as much leeway as progress. The mate and Clements were not on very good terms; the mate told me he did not like Clements because he had too much talk; he was generally called "gassy Clements."

Capt. S. S. Riggs, recalled by Joynes.—Aboard the J. B. Lindsey, I had a little less than \$500, in dollars, and a Colonial bank bill for \$1154. This was known to the crew; I had cut off a third of the bill and sent it to the United States by the schooner May Flower; the crew did not know this.

Daniel J. Smith, sworn.—I was aboard the J. B. Lindsey the 27th of January, Sunday. I turned into my berth in the cabin at about 8 o'clock; the first thing I heard was, I suppose, a shriek from the mate; the Captain ran on deck with his pistols; as he went up I heard a pistol fire; a short time afterwards I heard another, and the Captain came running back and said he was wounded; he said to me, "I wish you would get my powder; I went to look in the chest for it; in a short time I heard a voice which I took to be Clements' and several knocks at the starboard door; nearly at the same time I heard two reports of pistols; the Captain fired one and I suppose shot Reid; I saw a man lying on deck whom I took to be Reid. After this, not much happened that I saw, until Tuesday morning when Clements called out to the Captain to let them have the boat, and Tom Castello came aft with a cutlass in his hand; and not long afterwards he called to us that they were astern, and we went on deck and saw the boat with Clements and Reid in it.

By Joynes.—On Monday night, I think, I fired at somebody about the mainmast in the hold; my first pistol snapped, the second went off; this was the only pistol I fired until we came up; there was, I think, a pistol fired in the hold Tuesday. I understood Clements to say to me, "cook, come out and be murdered;" the door on the larboard side remained open until Tuesday morning, when I shut it, and the Captain and I made it fast with

a laniard; the binnacle slides were open, but we saw them closed Tuesday morning. When we came up, I saw the mate's body; I did not examine it at all. I always slept in the cabin. In Trinidad, I saw two small pistols in Clements' possession, which he offered to sell to the mate. I have seen such a knife as this, (shewn to him); it was lying on the deck with a couple of small pistols, while we were in Trinidad; no body had them. At Trinidad, I heard Clements say, "what did the Captain say about my sending off men to work." I said, nothing. He said he had better not say anything, or he would wring his neck or his nose. In Trinidad, I heard Clements say something to Castello about the freight, and heard something said about the money for the freight.

Cross-examined by Byrd.—I think the Captain fired two or three times; I can't say whether he fired as he ran on deck. I was a good deal frightened; I crept into the after cabin with the Captain; when we came up, the boat was about a hundred yards astern; the boy who came aboard talked pretty good English.

Castello, recalled.—The boy was Irish; I saw no private conversation between Clements and Reid and this boy; I thought it was only for fun they had him aboard; he was about 18 or 19 years old. I don't know that he was a sailor; he attended at the bar of the Crown and Anchor.

The evidence for the prosecution closed.

For the defence, Thomas Reid was offered as a witness for the accused, who was jointly indicted with him.

Joynes.—He is incompetent.

Carrington.—To sustain Reid's competency, cited Roscoe's Crim. Ev. 141. Starkie on Ev. ii. 16, 17. Hawkins P. C. iv.

Joynes.—The cases relied on are either where the accomplice was a witness *against* the accused, or where the parties were *separately* indicted; I think no case can be found where the parties are *jointly* indicted, in which one (unless he has been *acquitted*) is competent for the other.—II. Va. Cases 344, Campbell v. Comm'th. I. Hale's P. C. 903. Comm'th v. Marsh 10. Pickering 57.

Byrd replied, citing 2 Leigh, Brown v. Comm'th. Russell on Crimes 597. Starkie ii. 21.

The Court.—If this were a new question, I should be inclined

to admit the evidence. I confess I do not see much distinction *in principle*, between cases of *several* indictments for the same offence and *joint* indictments. But the decisions are express that in the latter case the alleged accomplice is not competent for the defence unless he has been acquitted. I must exclude Reid's testimony.

The evidence closed.

Joynes for the United States.—Roscoe 580. Where a homicide is proved to have been committed, the law presumes it to be murder, and it devolves upon the accused, from the evidence adduced either for or against him, to show that it is either manslaughter or justifiable or excusable homicide. He argued that the facts of this tragedy proved a combination between Reid and Clements, and that even though Clements had not struck a blow or raised a hand to fire a pistol, yet if he was present, ready to help, aiding and abetting, he was guilty of murder.

William A. Cocke, for the defence.—The accused is not guilty of *piracy* according to its legal meaning, Act of Cong. 1790, and according to the definition of piracy under the law of nations and the civil law—Story on Constit. 405. He cannot be convicted of “making a revolt,” because he is not so indicted. The Act of Congress makes murder on the high seas piracy, but the evidence does not make out a case of murder, it is manslaughter only, at most, and that is a separate statutory offence, by Act of Congress, see 3178, Gordon's Dig. 933. Not being indicted for manslaughter, he cannot be convicted at all.

J. M. Carrington, for the defence.—Addressed the Jury for an hour, commenting upon the law and the evidence.

Byrd.—Assailed the testimony of the Captain and Castello; and argued that if the Jury believed a part of Clements' statement, they ought to believe it all, and if they believed that the mate struck him with a handspike—there was ample provocation to make the killing manslaughter. He spoke two hours, not concluding until

FRIDAY, NOVEMBER 29TH, 1851.

Joynes closed for the prosecution. He argued that there was nothing to prove that the mate struck the accused before the fatal blow was given; he vindicated the Captain and Castello, and

ended by an earnest appeal to the Jury, fair alike to the accused and the United States.

The Jury retired at about ten minutes past one, and in a quarter of an hour returned with a verdict of "Guilty."

TRIAL OF THOMAS REID.

(Instead of repeating the evidence of Capt. S. S. Riggs, Thomas Castello and Daniel J. Smith, I have in this report, given only such of their statements as were additions to, or explanations of, their former testimony. I made full notes of their evidence in both trials, and the general consistency of their first and second statements is so entire, that I have deemed a second report in full, to be unnecessary.

R. R. H.)

HON. JAMES D. HALYBURTON, JUDGE.

In the U. S. Circuit Court, for the 4th Circuit and Eastern District of Virginia.

| | | |
|---------------|---|------------------------------|
| United States | } | Thursday, December 12, 1850. |
| v. | | |
| Thomas Reid. | | |

The prosecution and indictment were the same as in the trial of Edward Clements, ante pages 91-92.

The accused appeared to be from 30 to 35 years old, and about 5 feet, 8 inches high; he had dark hair and eyebrows, and a dark complexion; a slight scar was visible on his face, near the nose and eyes; his expression was not forbidding, though firm.

He pleaded "Not Guilty" to the indictment, as before stated.

The following were the Jury.

James H. Gardner, Wm. M. Sutton, Wm. Slater, Hiram Bragg, Ira Tichenor, Edw'd D. Eacho, Charles G. Thompson, R. M. Al-

len, Thomas W. Keesee, James Phillips, Franklin Stearns, Hugh Raleigh.

For the United States, William T. Joynes.

For the Prisoner, R. G. Scott, T. P. August, A. Judson Crane.

Upon request of the prisoner's counsel, the prisoner's affidavit was taken to certain statements upon which the Court directed a writ of *habeas corpus ad testificandum* to issue to the Jailor of Henrico county Jail to bring up three persons confined there, viz. Franklin Allison, Joseph J. Hall and Edward Curtis.

FRIDAY, DECEMBER 13, 1851.

Solomon S. Riggs, sworn.—I had some suspicions of these men in the Port of Spain. I arrived there the 17th of January, sold my cargo, went aboard the vessel, got my papers and got my cargo entered at the Custom-House—engaged a large lighter called a "Go-bar," and nearly loaded her; on the 18th we went on discharging. In the evening, after supper, Clements and Reid asked me for permission to go ashore; I gave it, but told them to be back by gun-fire. They were not aboard the next morning; I remarked I expected Reid and Clements were in the "Calaboose." While we were working, two black men came along side and said they had sent them to work in their places. After awhile I went ashore; at the landing Reid and Clements met me; Clements asked me how the men they had sent worked; I said, "quite well;" Clements asked me if I would go up and take a glass of porter; in the afternoon they went aboard before I did; when I came aboard, the cook said to me he was afraid I would have trouble—(Stopped by *Mr. Scott*.) On the 25th we went to Five Islands, and ballasted before sun down the 26th. In the course of the day Clements kept up a "monstrous hallooing and to do;" I thought it didn't look right; I told the mate we would go to sea early the next morning. As I was sitting aft, inclining my head near the (dacey?) I saw Reid who seemed to be filing something; he was sitting forward on the windlass; every now and then he seemed to be peeping round the foremast at me; I did not see what he was doing, but heard the sound. These things made me a little wakeful, I did not sleep much that night.

Joynes.—Captain Riggs, where and by whom was the vessel owned?

August.—We insist that Capt. Riggs cannot be permitted to prove these matters by his verbal statement; the best evidence of ownership is the Register, and it ought to be produced.

Scott —I remember that this question was before Chief Justice Marshall in a case in which I had the honour to be counsel. It was in the trial of a Chilian, accused of murder aboard a vessel which, I think, was alleged to be owned in New Bedford. The prosecution sought to prove that this vessel was owned by American citizens in New Bedford; the Chief Justice said the ownership must be proved, and that as the Acts of Congress required Registry, that was the best evidence, and none secondary could be introduced.—Roscoe I. Gilbert's *Ev. Buller's Nisi Prius*. I take the principle to be this, that the law has fixed what shall be evidence of title to the vessel, and this is required to be written and matter of record in the Custom House. If the J. B. Lindsay had papers, they ought to be produced, if she had none, then when she passed upon the high seas, she was not an American vessel or not entitled to peculiar protection as such.

Joynes was about to reply.

The Court stopped him. This point has been frequently raised before me and, I believe, always in Criminal cases. Suppose no registry acts had ever passed and a murder had been committed on the high seas aboard an American vessel, would it not have been punishable according to the Laws of the United States? I think it would. Then, as to the Registry acts, they were intended to encourage and protect our commerce, but I think that an American vessel not registered, is still a vessel of the United States, and that crimes committed on board of her would be punishable according to the acts of Congress. But admit that she was Registered, is there any thing in the acts of Congress or the general rules of law making the register the highest evidence of ownership? The registry is merely the oath of a party that the vessel is owned by certain persons, reduced to writing and recorded in the Custom-House. It does not seem to me to be higher evidence than the oath in open Court of a witness who knows the ownership. The objection is overruled.

Witness.—She was the property of (as before stated.) I think she was built in North Carolina.

Cross-examined by Scott.—I cleared for Martinique ; I think I went thither and then to Trinidad for a market ; I had no money going out, except five or six dollars. In the voyage out I did not observe that Reid and Clements had any arms ; they behaved and worked well. They paid the black men for working, I did not ; when Clements hallooed so much Saturday, it surprised me because he had not done it before, but it is not unusual for seamen in hoisting to halloo ; he made a great noise. In Trinidad I received about \$500 in specie, and brought it aboard in a little bag ; this was late Friday evening. Clements and Reid were in the boat with me when I brought it off. The pistols handed to me by the mate, I afterwards gave to another mate who shipped with me at St. Thomas ; I gave them to him in Ocracock Inlet. I delivered my own pistols to the U. S. Commissioner at Norfolk. There were eight berths in the cabin ; the cook and I both lay in berths, he on the larboard and I on the starboard side, but I don't know that any one outside could have seen either of us. When I ran out the mate was lying on the starboard side—his head towards the rudder—his feet under the wheel ropes ; I was on the larboard side, with my head resting on a spoke of the wheel when I heard them running back aft. I made no remark ; I did not say, " who is there," had not time ; I fired after Reid fired ; yes, sir, I was alarmed ; I got into the cabin as fast as possible. The second time he fired, he came round the corner of the house, his ball, as I afterwards found, struck the facing of the door and passed through the lid of my chest ; I was right in front of a *stand* which comes out 18 inches from the bulkhead. I fired back and he fell with his feet near a ring-bolt in the deck.

Thomas Castello, sworn.—Reid said nothing when we were throwing the body of the passenger overboard ; it took place about 1 o'clock Monday.

Cross-examined by Scott.—The city of Norfolk is my present residence. I shipped the 19th of November, 1849, at Boston, with the mate John Heeney, aboard the J. B. Lindsey, Captain Hathaway. I have been a seaman twelve or thirteen years ; when Capt. Riggs sailed, we went first to San Dominique, then to Martinique, then to Tobago, then to Trinidad ; there was a difficulty

at Trinidad between the Captain, Clements and the cook Smith Reid and I were neutral; I can't say as to the day of the month; I did not keep the log book. I introduced the passenger, John Walker, to the Captain; I have seen Reid, Clements and the passenger all pretty drunk together; when I saw them once, the passenger was beastly drunk and under the table, and Reid and Clements were fighting. The passenger said he was an Englishman and wanted to come to the United States. I must now mention what I omitted to state on my former examination. In Trinidad Clements asked me how much money there was aboard; I said five hundred dollars; he told me I was a damned liar, there was at least eighteen or nineteen hundred dollars.

Scott.—Why did you not state this before?

Witness.—Because I forgot it—it did not come to my mind.

(Here, a sharp colloquy took place between Mr. Scott and the witness.)

I have *never* said since Clements' conviction, that I came here to convict him, and was glad he was convicted. I deny it entirely. I never said it or any thing like it, and I challenge any body to shew it.

By Joynes.—Clements' question about the money was on Monday; Reid, Clements and I were then all standing together.

SATURDAY, DECEMBER 14, 1850.

Daniel J. Smith, sworn.—In Trinidad I heard Clements talk about the money; I never heard Reid say any thing particularly one way or another; I heard Clements say to Reid, "I should like to take the vessel and get the money;" Reid made no reply. Clements said, it would be a pretty good raise if they could get through with it; in the same conversation he said it would be all right if they could get me, they would put Tom Castello to death and I must kill the Captain. I never heard Reid say any thing more than "umph umph." One evening I went ashore; Castello set me ashore in a boat; Clements and Reid asked us if we would take something to drink; Castello said a little beer would do. They wanted me to go up to a woman's, named "Yankee Lize;" after we got up there, they asked me if I would drink a little sweet wine; I said I didn't care, sweet wine would do as well as any thing else. They sent out for a bottle; Clements

was mixing a dose ; I thought he might be going to poison— (stopped.) After a while they introduced me to “ Yankee Lize ” and I went with her ; they went away.

Cross-examined by Scott.—I shipped aboard the J. B. Lindsey at Elizabeth City. ’Twas in January I think. I shipped one day and was off the next. I am from South Carolina. We had been three or four days at Trinidad before I heard Clements say any thing about the money. Some of our cargo was out. I don’t guess they thought I heard them ; I was standing near and heard. I did *not* state at the former trial that I heard Clements say all this about the money and taking the vessel, because I was stopped, I was commenced in the middle and stopped in the middle.

Scott.—Who stopped you ?

Witness.—*All hands and the cook.*

Scott.—Who ?

Witness.—I don’t know who stopped me ; I knew all this then and would have stated it, but I was stopped. Capt. Riggs and I have had strife, but it is all over and I suppose nothing is to be said about it now. The Captain *did* once try to shoot me, but I suppose he was out of his head ; he snapped one of his pistols at me the Friday after the Tuesday we came on deck ; I think he must have been out of his head ; at St. Thomas, the Captain put me in irons, but I was taken aboard when we left and did my duty to Elizabeth City.

By Joynes.—He put me in irons because I got somewhat intoxicated ; I don’t know any other reason. When he snapped the pistol at me I think he was certainly out of his mind ; he had been asleep not long before ; I got up out of my berth and was going out when he roused up and snapped a pistol at me.

By a Juror.—He said nothing, not a word was said. He gave me the pistols immediately afterwards and told me to put them into his chest ; I put them and a knife he had into his chest and locked them up and kept the key. The Captain was very unwell ; he suffered a good deal from his wound ; he did very little duty before we got into St. Thomas.

(By the Court.)—I never saw any symptoms of derangement in him before.

Castello, recalled.—I do not know whether the Captain snap-

ped the pistol at Smith or myself or a tarpaulin. The man was not rational, sir. This was on Saturday the 2nd February. He had been suffering much from his wound; I think he was not rational from his manners, his action, his eyes, every thing about him. He was often in a high state of fever. He did little or nothing in navigating the vessel; he tried to take an observation from the sun and he made the latitude $17^{\circ} 12'$ when we were certainly in $17^{\circ} 38'$. Sunday night Smith and I were obliged to take the vessel from him. We got in on the 4th of February; the Captain was taken ashore by a physician.

The evidence for the prosecution closed.

For the defence:

John R. Tucker, Lieut. U. S. N., sworn.—I know Reid the prisoner; He sailed with me about 28 months in a voyage to the East Indies in the U. S. Ship St. Louis. His character was very good; he was very quiet, industrious and attentive to his duties. From all my opportunities of knowing him, I believe he had a kind and tractable disposition. We left the U. States in 1843, and got back in 1845. I think he was stationed in the foretop during the whole voyage. I do not think he knew any thing of navigation; I should probably have found it out if he had known any thing of it. His character and conduct must have been more than ordinarily good from the fact that in so long a cruise I heard no complaint of him.

Charles F. McIntosh, Lieut. U. S. N., sworn.—I know Reid well; he was in the U. S. Frigate Saratoga with me some 12 or 15 months in 1847 and 1848. It was in the Gulf of Mexico; I believe his character was very good; he was a very quiet, good man, and I think a great favorite with the crew. He talked very little; I may say that Reid, like all other seamen, would sometimes go ashore and get drunk, and then he was a very reckless man, but when sober he was remarkably quiet and peaceable; he had no knowledge of navigation, I think.

Franklin Allison, sworn.—I have had some conversation with Castello in the jail. The day Clements came last from Court, I saw Castello and Smith; I asked Castello what was the result, he said Clements was convicted and it was what he (Castello) went for, and that if his evidence would convict Reid he would do it.

Cross-examined by Joynes.—Clements was up stairs; I was down stairs; I have the privilege of going up and down stairs; I have been confined about 12 months; I am charged with horse stealing, have never been tried; never had any conversation with Clements about his trial; I spoke to both Smith and Castello, but don't know whether Smith heard; I think I mentioned this talk to Reid; I think some of the other persons heard me talking; I never mentioned it to Mr. Winston the jailor, and never afterwards talked to Castello. This conversation was at the lower window; I don't know whether any person was at the window above. I mentioned this to Reid the same evening; I did not like to talk to Clements because he seemed low spirited.

Joseph Hall, sworn.—I knew Castello in St. Thomas; he was a seaman aboard the J. B. Lindsey; I went aboard the 3rd day after his arrival and conversed with him; I remember he shewed me the place on the rail where he cut the painter; he said he struck two blows. I heard some talk, in the jail, between Allison and Castello at the window, I understood Allison to ask him how Clements came out at his trial. Castello answered, "I have convicted Clements and intend to do the same for Reid if my oath will do it."

Cross-examined.—Curtis and I were standing at the stove; 'twas not in a room, 'twas in a passage; the stove was 3 or 4 feet from the window; I saw Castello's face but saw nobody with him. I told Clements and Reid about this conversation the same evening; I said nothing to others, because Reid asked me not to, as he wished to have me as a witness. *Joynes.*—Why are you in prison? *Witness.*—*For refusing to work without food.* Four others were convicted at the same time. I was in no vessel in St. Thomas. I had been shipwrecked and was in charge of the United States Consul; I came to the United States in the schooner Joseph Barker.

Edward Curtis, sworn.—I have heard Castello speak of Clements; two weeks ago last Friday, Allison, Hall and I were in the passage by the stove; Castello passed by the window; Allison asked him how Clements' case had gone; Castello said he had convicted Clements, and would do the same for Reid if his oath would do it.

Cross-examined.—I did not see any body with Castello; I *slay-*

ed round and went up stairs ; Allison and Hall did not follow me immediately ; I went up and told Clements and he said he hoped I would remember the words ; I never mentioned it to Reid or any body else. I have been in jail about a month *for refusing to eat salt beef*. I don't exactly know what the charge was ; five of us were convicted at the same time.

At this point Mr. *Joynes*, at the suggestion of the Court and in justice alike to the witnesses Hall and Curtis and the U. S., stated that they had been convicted at Norfolk, under the act of Congress, for "conspiring and encouraging each other to disobey orders."

The evidence closed.

Mr. *Joynes*, for the prosecution, addressed the Jury from 4 to 2 until 3 o'clock.

Mr. *Crane*, for the prisoner, spoke from 4½ to 5½ o'clock, P. M.

Mr. *August*, for the prisoner, spoke on Monday, December 16th, from half past 10 A. M., 'till 12½ P. M.

Mr. *Scott*, from 15 minutes past 12, 'till 10 minutes past 2.

Mr. *Joynes* closed at about 5 o'clock.

The Jury retired, were kept together during the night, and returned into Court on Tuesday, December 17th, 1850, at half past 2 o'clock, with a verdict of "Guilty."

Thursday, December 19, 1850.—A motion for a new trial in Clements' case was made and argued at length. The grounds assigned were :

1. That Reid's testimony ought to have been admitted.
2. That evidence had been admitted of the murder of Walker ; another and a distinct offence, and the subject of a distinct indictment.
3. That the Jury ought to have been charged as to manslaughter as well as murder ; the prisoner's counsel, *Byrd and Carrington*, insisting that under this Indictment he might have been convicted of manslaughter.

4. That new and material evidence had come to light since the trial ; (referring to the evidence of Allison, Hall and Curtis.)

Friday, Dec. 20th.—The Court overruled the motion for New Trial.

Saturday, December 23rd, 1850.—The prisoners were brought up for sentence. On being asked if they had any thing to urge, Edward Clements said, in substance, that he had no hope that what he said would prevent the sentence, but he wished to make a statement: "At 8 o'clock my watch was out; I left Heeney and Walker on deck; Castello had gone to the fore-castle; as my custom was, I took my blanket aft and laid down on deck to sleep; I was awakened by the mate who punched me in the side with a hand-spike, and told me to get up and sway up the fore-sail; I told the mate it was not my watch, that there were two of them and that in my watch I would do what it was my duty to do; John Walker said, if he had command of the watch, and if he were the mate, he would knock my brains out; the mate then said, 'get up or I'll knock your brains out,' and struck me on the arm. I said I would report to the Captain; a struggle took place and I stabbed him with my sheath knife and he fell at my feet; the passenger interfered and Reid killed him."

The Court sentenced them, and appointed the last Friday in January as the day of their execution.

Thursday, January 16th, 1851.—A motion for a new trial in Reid's case, was made by his counsel on two grounds:

1. That after the Jury were sworn, and before they rendered their verdict, a copy of the "Dispatch" newspaper which contained a statement of the evidence, was read by several Jurors without the consent or knowledge of the Court or Counsel.

2. That Reid ought to have been admitted as a witness for Clements and Clements for Reid, under sec. 21, chap. 199, Code of Va. 752, which reads thus: "No person who is not jointly tried with the defendant shall be incompetent to testify in any prosecution by reason of interest in the subject matter thereof." This statute seems to have escaped the attention of the counsel for both prisoners until both trials were over. They now contended that it gave the rule in the United States Courts.

Joynes.—I shall insist that the Jurors are not to be heard to prove any facts by which *their own* verdict is sought to be assailed.

This question was fully argued, the counsel for the prisoner

relying chiefly on McCaul's case, 1 Va. Ca. 306, Kennedy's case, 2 Va. cases 510.

Friday, January 17th. The Court.—It is undoubtedly true that the Courts have not admitted without great reluctance and caution the affidavits of Jurors, in order to attack their own verdict. In civil cases, involving only pecuniary interests, the public inconvenience which would result from hearing such affidavits is sufficient to exclude them, but in criminal, and especially capital cases, I think the favor of the law to Life and Liberty is more than the argument from inconvenience. I shall therefore hear the affidavits of the Jurors.

Several Jurors were sworn and testified. Among them,

Charles G. Thompson, sworn.—I saw a paper in the hands of some of the Jury; I don't know what paper it was; it contained a statement of the evidence in Reid's case. I probably read a quarter of a column.

By Joynes.—I think what I read was a statement of the Captain's testimony; I was not at all influenced by what I read; I do not think that report was entirely accurate; I think we had heard the evidence but not the argument; I believe I read the paper before the Court was opened in the morning.

Hugh Rileigh, sworn.—I read a copy of the "Dispatch" containing a statement of the evidence in Reid's case. I read some part of it here and some part in the Jury room. I had the paper in my pocket; I do not know that it was read by any other Juror; I think it was once spoken of; the report I thought accurate, but I did not read it particularly.

By Joynes.—I got the paper at my store; I am a subscriber for it, and pay by the week. I was not at all influenced by what I saw in the paper. *By the Court.*—I sometimes referred to it for the purpose of refreshing my memory, but if I found there any statement which I did not recollect at the trial, it had no influence on me; I read more from curiosity than otherwise. My impressions were not altered as to the question of "Guilty" or "Not Guilty" from first to last.

The motion for a new trial was elaborately argued for the prisoner by *Scott* and *Crane*, and for the United States by *Joynes*.

The Court.—As these cases and the questions that have been raised are of great importance, I shall not now decide the mo-

tion, but shall adjourn it to the next term, when it is probable the Chief Justice may be sitting here. In the mean time I shall set aside the Judgments.

HON. ROGER B. TANEY, *Chief Justice of the United States, and*
HON. JAMES D. HALYBURTON, *District Judge, Sitting.*

In the United States Circuit Court, for the Fourth Circuit, and Eastern District of Virginia.

Friday, May 14th, 1851.—The motion for a new trial in Reid's case came up for re-argument.

Joynes.—I shall again insist that the Jurors ought not to be heard at all against their own verdict, but for convenience and for the purpose of saving time, this question may be argued with the others that arise.

Taney, C. J.—If it will not disturb too much the course of argument for which the prisoner's counsel have prepared themselves, the Court would prefer that this question as to the admissibility of the Jurors' statements, shall be argued *first* in order.

Crane.—1. As to the admission of the Jurors' affidavits.—Bacon's Abridg't, 5 vol. 369. 1 Croke, Eliz: Metcalfe v. Dean 189. Comm'th v. McCaul, 1 Va. Cases 306. Overton's Case, 1 Robinson, 756. 5 Pickering 296. 13 Massach. Reports 217.

2. As to the competency of Reid for Clements and of Clements for Reid, I cite first our Statute New Code of Va. 752. The construction of this seems plain and I suppose, if this prosecution were in the State Court, the question would be promptly decided. Does this act give the rule of evidence in the U. S. Courts? I insist that it does. 34 sec. Judic'y Law 1789. Gordon's Dig. sec. 534, page 125. The laws of the several States are rules of decision in trials at common law. Burr's Trial 481 Contra. 10 Wheaton 1. 9 Cranch 98. 11 Peters 175. 12 Peters 84. Hamilton's Argument in the Judiciary in Federalist.

3. As to the effect of the Jurors' evidence in vitiating the verdict. Wheaton's Crim. Law 644-5. Bacon's Abridg. 5. 369 Edit. 1844. 2 Hale's P. C. 296. U. S. Digest 1849. 2.695. Supp. U. S. Dig. 5.435. Overton's case 1 Robinson 756. 12 Pickering 496. 1 Pickering 337. Mass. Rep. 13. 217. Com'th v. McCaul 1 Va. Cases 306.

Joynes.—1. The affidavits of Jurors ought not to be admitted to prove their own misbehaviour. This is the settled English rule commencing with *Varse v. Dilaval* 1 T. Rep. 11. 1 Chitty's Crim. Law 655. *Graham on New Trials* 111. *Straker v. Graham* 4 M. & W. 721. *Burgess v. Langley* 4 M. & Gr. 722. The same rule prevails generally in the U. S. *Wharton's Crim Law* 655. It is the rule in criminal as well as civil cases, *Rex v. Woolley* 6 M. & S. 366. *State v. Freeman* 5 Conn. Rep. 348. *Com'th v. Drew* 4 Mass. Rep. 398. *State v. Dry* 1 Murphy 94. *State v. McLeod* 1 N. C. Rep. 344. In Tennessee, such affidavits were held admissible in criminal cases in *State v. Crawford*, 2 Yerger, but the practice has since been regretted and characterized as dangerous, and a disposition expressed to restrict it. *Norris v. State* 3 Hump. 333. Commented on *McCaul's case*, *Kennedy's case* and *Overton's case*. In all of them, affidavits of the Jurors were either accompanied by other evidence or designed for their *exculpation*. See *Cochran v. Street*, 1 Washington 103. *Moffat v. Bowman* 6 Grat. 219. *Price v. Warren* 1 H. & M. *Shobe v. Bell* 1 Rand. 392. *Hadwell v. Burnett* Ib. 282. *Hansberger v. Kinney* 6 Grat. 287.

2. As to the competency of the accused for each other. Sec. 21, page 752, Code of Va., gives no rule in this Court. 10 Wheat. 49. *U. S. v. Marchant*, 12 Wheat. 480. *U. S. v. Shive*, Bald. 511—*v. Wilson*, Bald. 82. *Case of Western Insurgents*, 2 Dallas. 2 Burr's Trial 481. *Chase's Trial* 165; appen. 34. The 34 Sec. Gordon 334, adopts only rules of property, 16 Peters 1. See *McNeil v. Holbrook* 12 Peters 84. If it adopts rules of *evidence* in criminal cases, then there will be no uniformity and a man accused of *piracy* would be acquitted in one State and convicted in another. But if sec. 21, p. 752, Code of Va., gives the rule here, still I insist it has not altered the Com. Law which excludes accomplices for each other. This sec. only applies to witnesses *in support* of the prosecution, I. R. C. 581, 582. Acts 1847-48, p. 124, Rep. Rev's 987. The construction of this act insisted on for the prisoner, would deprive this Court of its discretionary power as to granting separate trials to parties jointly indicted. See *U. S. v. Marchant*, 12 Wheat 480.

3. As to the facts said to be proved by the Jurors. They are no ground of new trial. *Thomas' case* 2 Va. Cases. *McCarter's*

case, 11 Leigh 633. 12 Picker. 496. 1 Hill 207. 6 Leigh 1. 2 Sumn. 83. Trial per pais 218, 223, 225, 229. Graham 47. Rex v. Wolfe, 1 Chitty 701.

Scott.—Replied, commenting upon the authorities cited by Joynes, and citing Graham on N. T. 109, 161. 5 Pickering. Grayson's case, 6 Grattan. If the State Law does not give the *rule of Evidence*, a negro would be competent in the Southern States to testify against a white man in the U. S. Courts!

The Court heard the statements of such of the Jurors as were *willing* to make them, as to the reading of the "Dispatch," and its effect upon their minds.

Monday, May 19th. Taney Ch. J.—Judge Halyburton and myself differ as to two points arising upon this motion. 1. He thinks Reid's testimony admissible upon a proper construction and application of sec. 21, ch. 199 Code of Va. I should concur with him if I regarded this a mere question of evidence, but I think it goes deeper and affects the discretionary power of this Court as to granting *several* trials upon joint indictments. This rests in the sound discretion of the U. S. Courts, but if this Act of Virginia applies as contended for, the prisoners would have a *right* to insist upon separate trials. I think therefore the act does not apply.

2. Judge Halyburton also thinks a new trial ought to be granted on the statements of the Jurors. I do not think affidavits of Jurors ought to be received to impeach their own verdict, but even if received the statements of the Jurors in this case seem to me no ground for a new trial. Upon a certificate of this division of opinion between Judge Halyburton and myself, the questions in these cases will go to the Supreme Court of the United States for decision.